

REGULATING MANUFACTURE, SALE AND TRANSPORTA-  
TION OF ALCOHOLIC LIQUORS.

H. B. No. 77.]

CHAPTER 467.

An Act defining the term "open saloon" and prohibiting the operation of an open saloon, and providing a penalty for its violation; regulating the traffic in alcoholic liquors in this State, and prescribing penalties for the violation of offenses defined in connection therewith; creating the Texas Liquor Control Board, prescribing the qualifications and duties of the members thereof, and vesting it and other departments of State government with power to administer the provisions of this Act; providing for local option elections in counties, justice precincts, incorporated cities and towns to determine whether or not the qualified voters desire to authorize the sale of intoxicating liquors having various alcoholic contents; establishing a system of permits and licenses for persons engaged in the various phases of the liquor traffic; levying fees and taxes, and providing for their collection and allocating the fees and taxes collected; repealing Chapter 7, Title 11, Penal Code of 1925; Title 80, Revised Civil Statutes, 1925; Chapter 116, Acts of the Regular Session, Forty-third Legislature, and all amendments thereto; defining terms used in the Act; making appropriations; and declaring an emergency.

*Be it enacted by the Legislature of the State of Texas:*

Article I

SECTION 1. This Act may be cited as the "Texas Liquor Control Act."

SEC. 2. This entire Act shall be deemed an exercise of the police power of the State for the protection of the welfare, health, peace, temperance, and safety of the people of the State, and all its provisions shall be liberally construed for the accomplishment of that purpose.

SEC. 3. (a) The term "open saloon," as used in this Act, means any place where any intoxicants whatever, manufactured in whole or in part by means of the process of distillation, or any liquor composed or compounded in part of distilled spirits, is sold or offered for sale for beverage purposes by the drink or in broken or unsealed containers, or any place where any such liquors are sold or offered for sale for human consumption on the premises where sold.

(b) It shall be unlawful for any person, whether as principal, agent or employee, to operate or assist in operating, or to be directly or indirectly interested in the operation of any open saloon in this State.

(c) It shall be unlawful for any person who is authorized by law to sell malt or vinous liquors for consumption on the premises where sold, or any person who acts as agent or employee of any person, firm, or corporation authorized to sell malt or vinous liquors for consumption on the premises where sold, to have in his possession, at or near the premises where such malt or vinous liquors are sold for such purpose, any liquor

produced by the process of distillation or any liquor containing alcohol in excess of fourteen per cent (14%) by volume.

(d) Any person who violates any portion of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or by imprisonment in the county jail for not more than one year. Any person who is twice convicted under the provisions of this section shall for the second and all subsequent offenses be punished by fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), and by confinement in the county jail for not less than thirty (30) days nor more than one (1) year.

(e) Any person who violates any provision of Article I of this Act other than those contained in this Section shall be subject to the penalties prescribed by Sections 41, 42, 43 and 44.

SEC. 3-a. Whenever the word liquor is used in this Act it shall mean and refer to any alcoholic beverage containing alcohol in excess of four per cent by weight unless otherwise indicated.

SEC. 4. Unless otherwise herein expressly excepted it shall be unlawful for any person to manufacture, sell, possess for the purpose of sale, import into this State, or transport any alcohol or any liquor. Unless the exceptions hereinafter made to this section are clear and specific they shall not obtain in favor of any person with respect to any prohibited act and they shall be strictly construed for the accomplishment of this purpose. It is further expressly provided that any rights or privileges that are granted herein to any person as exceptions to the prohibitions contained in this section shall be enjoyed and exercised only in the manner provided by this Act.

SEC. 4. (a) It shall be unlawful for any person to manufacture, sell, possess for the purpose of sale, import into this State, or transport liquor in wet areas or dry areas without first having obtained a permit or without first having complied with all other terms and provisions of this Act; provided however that the prohibition contained in this Section against the transportation of liquor shall not apply to a person who has purchased such liquor for his own consumption and is transporting the same from a place where the sale thereof was lawful and to a place where its possession by him is lawful; provided further, that the prohibition contained in this section against the importation and transportation of liquor shall not apply to a person who is bringing into this State not more than one (1) quart of liquor for his own personal use.

SEC. 4. (b) It shall be unlawful for any person to manufacture, sell, transport or possess for the purpose of sale in any dry area under this or any other Act in this State any liquor containing alcohol in excess of one-half ( $\frac{1}{2}$ ) of one per centum (1%) by volume; provided however, it shall be lawful for the holders of carrier permits and private carrier permits to transport such

FORTY-FOURTH LEGISLATURE—SECOND CALLED SESSION. 1797

liquor from one wet area to another wet area where, in the course of such transportation, it is necessary or convenient to cross such dry area; provided further that this section shall not apply to the holders of industrial or medicinal permits; provided further, that this section shall not apply to liquor of a type or alcoholic content that has been legalized in any such prescribed area.

SEC. 5. There is hereby created a Board named the Texas Liquor Control Board, consisting of three (3) persons, all of whom shall be appointed by the Governor, by and with the advice and consent of the Senate, and one of whom shall be designated by the Governor to be Chairman of the said Board, and said members shall receive their actual expenses while engaged in the performance of their duties and a per diem of Ten Dollars (\$10.00) per day for not exceeding sixty (60) days for any one year. Each member at the time of his appointment and qualification shall be a resident of the State of Texas and shall have resided in said State for a period of at least five (5) years next preceding his appointment and qualification, and he also shall be a qualified voter therein. Of the members initially appointed each shall hold office from the date of his appointment for the following respective terms, and until their respective successors shall qualify: One member for two (2) years, one for four (4) years, and one for six (6) years from the effective date of the Act. Each member may be initially appointed on or subsequent to the date this Act goes into effect. The Governor, at the time of making and announcing the appointment of said three (3) members, as well as in the commission issued by him to each of them shall designate which of said members shall serve for each of the said respective terms and also which shall be the Chairman of the Board.

Upon the expiration of each of said terms, the term of office of each member thereafter appointed, shall be six (6) years from the time of his appointment and qualification, and until his successor shall qualify. In case any member shall be allowed to hold over after the expiration of his term, his successor shall be appointed for the balance of the unexpired term. Vacancies in said Board shall be filled by the Governor for the unexpired term. Each member shall be eligible for reappointment in the discretion of the Governor. No person shall be eligible for appointment, or shall hold the office of member of the Board, or be appointed by the Board, or hold any office or position under the Board, who has any connection with any association, firm, person, or corporation engaged in or conducting any alcoholic liquor business of any kind or who holds stocks or bonds therein, or who has pecuniary interest therein, nor shall any such person receive any commission or profit whatsoever from or have any interest whatsoever in any purchase or sales of any alcoholic liquors.

The office of the Board shall be in the City of Austin, Texas.

The said Board shall meet at such times within the City of Austin as the Board shall determine, and the members thereof shall be entitled to their reasonable expenses for each meeting so attended, and the per diem hereinabove referred to. A majority of the members shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the Board.

The Board shall appoint an Administrator who shall serve at the Board's pleasure and who shall under the supervision of the Board administer the provisions of this Act. He shall receive a salary not exceeding Five Thousand Dollars (\$5,000.00) per annum, and shall execute a bond, in the sum of Ten Thousand Dollars (\$10,000.00) payable to the State of Texas, conditioned as the Board shall require.

The Board and/or Administrator shall appoint all necessary clerks, stenographers, inspectors, and chemists and other employees to properly enforce the provisions of this Act. No person shall be eligible for any appointment who has any financial connection whatever with any person engaged in or conducting any liquor business of any kind, or who holds stock or bonds therein, or who has any pecuniary interest therein, nor shall any such person receive any commission or profit whatever from, or have any interest whatsoever in, the purchases or sales made by persons authorized by this Act to manufacture, purchase, sell, or otherwise deal in the liquor business.

The Administrator shall act as manager, secretary and custodian of all records unless the Board shall otherwise order.

The Administrator shall devote his entire time to said office.

The Board and/or Administrator shall fix the duties, salaries, and wages of all employees authorized by this Act but such compensation, salaries, and wages shall not be greater than the salaries fixed for similar positions and duties in other departments of the State government. The salaries herein authorized shall not continue in effect beyond the effective date of the General Appropriation Bill for the Forty-fourth Legislature. The Board shall likewise have power to require any employee authorized by this Act to give bond for the faithful performance of his duties in such an amount and under such conditions as it may deem adequate and proper.

It shall be the duty of the Board, during the month of January of each year, to make a report to the Governor, concerning its administration of this Act.

SEC. 6. Among others, the functions, powers and duties of the Board shall include the following:

(a) To control the manufacture, possession, sale, purchase, transportation, importation, and delivery of liquor in accordance with the provisions of this Act, and make all necessary rules and regulations to fully and effectually accomplish such purpose.

(b) To grant, refuse, suspend, or cancel permits for the purchase, transportation, importation, sale or manufacture of liquor or other permits in regard thereto.

(c) To investigate and aid in the prosecution of violations of this Act and other Acts relating to liquor, to make seizure of liquor manufactured, sold, kept, imported, or transported in contravention hereof, and apply for the confiscation thereof whenever required by this Act, and co-operate in the prosecution of offenders before any Court of competent jurisdiction.

(d) To exercise all other powers, duties, and functions conferred by this Act, and all powers incidental, convenient, or necessary to enable it to administer or carry out any of the provisions of this Act and to publish all necessary rules and regulations and mail the same to all interested parties.

(e) In the event the United States government shall provide any plan or method whereby the taxes on liquor shall be collected at the source, the Board shall have the right to enter into any and all contracts and comply with the regulations, even to the extent of partially or wholly abrogating any provisions hereof which may be in conflict with Federal law or regulations to the end that the Board shall receive the portion thereof allocated to the State of Texas, and to distribute the same as in this Act provided.

(f) To require that any liquor sold in this State shall conform in all respects to the advertised quality and quantity of such products.

(g) To license, regulate, and control the use of alcohol and liquor for scientific, pharmaceutical and industrial purposes, and to provide by regulation for the withdrawal thereof from warehouses and denaturing plants and to prescribe the manner in which the same may be used for scientific research or in hospitals and sanatoria, in industrial plants, and for other manufacturing purposes, tax free.

SEC. 7. The Board, the Administrator and any inspector under the direction of the Board, shall, for the purposes contemplated by this Act, have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without the State of Texas, as now provided by law, and compel the production of pertinent books, accounts, records, documents, and testimony.

If a witness in attendance before the Board or one of its authorized representatives refuses without reasonable cause to be examined or to answer a legal or pertinent question, or to produce a book, record, or paper when ordered to do so by the Board, the Board may apply to the Judge of the District Court of any county where such witness is in attendance, upon proof by affidavit of the fact, for a rule or order returnable in not less than two (2) nor more than five (5) days, directing such witness to show cause before the Judge who made the order, or any other District Judge of said county, why he should not be punished for contempt; upon the return of such order the Judge before whom the matter shall come for hearing shall examine under oath such witness or person, and such person shall be given an opportunity to be heard; and if the Judge shall

determine that such person has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce a book, record or paper which he was ordered to bring or produce, he may forthwith punish the offender as for contempt of Court.

Subpoenas shall be served and witness fees and mileage paid as in civil cases in the District Court in the county to which such witness shall be called. Witnesses subpoenaed at the instance of the Board shall be paid their fees and mileage by the Board out of funds herein appropriated.

SEC. 8. No person shall import into this State any liquor, in excess of one (1) quart, from any source unless a permit be first obtained from the Board, and any person so purchasing or importing liquor in violation of this Section shall be subject to the penalties as hereinafter provided. In addition to the penalties hereafter provided, any person violating the provisions of this section shall forfeit the liquor so imported to the Board as herein provided.

SEC. 9. It shall not be necessary for any information, complaint or indictment to negative any exception contained in this Act concerning any prohibited Act; provided, however, that any such exception made herein may be urged as a defense by any person charged by such complaint, information or indictment.

SEC. 10. Every applicant for a brewer's, distiller's, winery (except Class B wineries), rectifier's, wholesaler's, beer and wine wholesaler's, or package store permit, under this Act shall give notice of such application by publication for two consecutive days in a newspaper of general circulation published in the city or town in the county in which applicant's place of business is located, provided that in any county where no daily newspaper is published, such notice shall be published once a week for two consecutive weeks; in those counties in which no newspaper is published, the notice shall be published in a qualified newspaper published in the closest neighboring county. Such notice shall be printed in ten (10) point black face type, the cost of which notice shall be borne by the applicant. The Board may require of every applicant for a permit the recommendation in writing of the County Judge of the county of his residence and it shall take such recommendation into consideration before granting or refusing such license. The Board shall have authority to issue temporary permits for periods not exceeding ninety (90) days immediately following the passage of this Act, but not thereafter.

SEC. 11. The Board shall refuse to issue a permit to any applicant if it has reasonable grounds to believe and finds any of the following to be true.

(a) That an applicant to sell at retail has been provided with funds by or has any financial or business connection with a manufacturer of, or wholesale dealer in, liquor.

FORTY-FOURTH LEGISLATURE—SECOND CALLED SESSION. 1801

(b) That the applicant is in the habit of using alcoholic beverages to excess or habit-forming drugs.

(c) That the applicant has been convicted of violating any of the alcoholic liquor laws of this State, general or local, or of any rule or regulation promulgated in pursuance hereof.

(d) That there is any other reason which, in the opinion of the Board based on general welfare, health, peace, morals, and safety of the people, warrants its refusal to grant such permit.

(e) That the Board believes, or has reason to believe, that the applicant will sell, or knowingly permit any agent to sell liquor in dry territory.

SEC. 12. The Board and/or Administrator shall cancel or suspend after notice and hearing any such permit granted if it is found that any of the following is true:

(a) That the permittee has violated any provision of this Act or Acts amendatory thereof, or any valid rule or regulation of the Board.

(b) That the permittee had made any false representations or statements to the Board in order to induce or prevent action of the Board.

(c) That the permittee is not maintaining an acceptable bond.

(d) That any retail permittee is acting as an agent of a manufacturer or wholesaler of alcoholic liquors, or has borrowed money or property or accepted gratuities therefrom, or has any connection therewith.

(e) That the permittee maintains a noisy, lewd, disorderly, or unsanitary establishment, or has been supplying impure or otherwise deleterious beverages.

(f) That the permittee is insolvent or incompetent or physically unable to carry on the management of his establishment.

(g) That the permittee is in the habit of using liquor to excess or habit-forming drugs.

(h) That the permittee knowingly has sold liquor to persons under twenty-one (21) years of age, to persons known to be drunkards, or to persons visibly intoxicated at the time of sale.

(i) That the permittee has misrepresented to a customer or the public any liquor sold by him.

(j) That there is any other reason which, in the opinion of the Board, based on the general welfare, health, peace, morals, and safety of the people, of the State, warrants cancelling or suspending such permit.

The governing authorities of any city or town or the Commissioners Court of any county shall have power to institute proceedings for the revocation or suspension of any permit granted hereunder. Such proceedings may be instituted by the filing of a complaint with the Board, and it shall be the duty of the Board to forthwith hear the same in accordance with the terms of this Act.

Notice of cancellation or suspension, stating the reason therefor, shall be served upon the permittee, or upon whatever per-

son may be in charge temporarily, or otherwise, of the licensed premises, or shall be affixed to the outside of the door of the licensed premises, or shall be sent by United States registered mail addressed to the permittee at the licensed premises, and said cancellation notice shall be published by the Board once a week for three (3) consecutive weeks in the county in which the licensed premises are located, or if no newspaper is published in said county, in a newspaper in a neighboring county. Cancellation or suspension shall take effect upon the affixing, service, delivery, or first publication of such notice. Such affixing, service, or delivery, or publication of a cancellation or suspension shall be adequate notice to all parties concerned. The publication or posting of such notices shall be privileged.

In the event of resort to any Court from an order of cancellation or suspension in whatever form the proceedings may be brought, it shall in no wise act as a supersedeas of the order of cancellation or suspension. The permit so cancelled or suspended shall stand cancelled or suspended pending the final disposition of the proceedings as hereinafter conditioned. No refund of permit fees shall for any reason be made by the Board.

In addition to the other powers herein granted to it, the Board shall have power to suspend or cancel any license issued under the provisions of Article II of this Act for the violation of any applicable provision contained in either Article I or Article II of this Act, or for the violation of any rule or regulation promulgated in pursuance thereof. Suspensions or cancellations shall be had in the manner and to the effect prescribed in the preceding paragraph. The Board may summarily cancel any such license where the holder thereof is found in possession of spirituous liquors on the licensed premises in violation of Sections 3 (c) and 15 (r) of Article I of this Act.

All notices, orders, records, and publications authorized or required by the terms of this Act shall be privileged. It is further provided that the certificate of the Board or the Administrator concerning any rule or regulation or other order promulgated under the terms hereof shall be prima facie evidence of the validity thereof, and the same shall be admissible as evidence in all Courts in this State.

SEC. 13. Any permit granted under this Act shall be a purely personal privilege, good for the year in which issued, and ending on August 31st of each year at 12 o'clock midnight, and revocable for the causes herein stated, subject to appeal as hereinafter provided, and shall not constitute property, nor shall it be subject to attachment or execution, nor shall it descend by the laws of testate or intestate devolution, but shall cease upon the death of the permittee; provided, that the Board may, by regulation, provide for the time and manner in which the successor in interest of any deceased, insolvent, or bankrupt permittee may dispose of alcoholic liquors left on hand by the permittee.



SEC. 14. And in the event of any person being aggrieved by any decision, rule, or order of the Board, such person shall have the right of an appeal therefrom to the District Court of the County in which a decision, rule, or order in such case would become effective, said suit to be against the Board alone as defendant, and such suit shall be tried de novo, and be governed by the same rules as other suits in said Court, and during the pendency of such suit the order of the Board may be suspended by interlocutory order of the Court pending a hearing on the merits. Such cause shall be tried before the Judge of such Court within ten (10) days after the docketing of the cause, or in the earliest possible time after such ten (10) day period, in the event the Judge is not able to try such cause within such ten (10) day period.

SEC. 15. Permits shall be of the following classes: Brewers, distillers, winery, rectifiers, wholesalers, beer and wine wholesalers, package stores, wine and beer retailers, agents, industrial, medicinal, carriers, private carriers, cartage, and storage.

(a) Brewer's Permit. A brewer's permit shall authorize the manufacture and sale of malt beverages containing alcohol in excess of four per centum (4%) by weight. The annual permit fee shall be One Thousand Dollars (\$1000.00). It shall be unlawful for any person holding a brewer's permit to sell malt beverages to any person who is not the holder of a permit authorizing him to purchase such malt beverages under this Act except when such malt beverages are sold and delivered to persons in other states.

(b) Distiller's Permit. A distiller's permit shall authorize the manufacture of spirituous beverages containing alcohol in excess of four per centum (4%) by weight and the rectification of the same. Such permit shall also authorize the importation into this State of alcoholic spirits including ethyl alcohol for use in or as ingredients in the manufacture of alcoholic spirituous beverages, but for no other purpose, and in no event for resale in this State. It shall be unlawful for any person holding a distiller's permit to sell such spirituous beverages to any one other than the holder of a wholesaler's permit under this Act unless the same be sold and delivered to a person outside this State. The annual permit fee for distillers shall be One Thousand Dollars (\$1,000.00).

(c) Winery Permits. A winery permit shall authorize the holder thereof to manufacture, bottle, package, and label wine; said permit shall also authorize the holder thereof to manufacture or import into the State grape brandy to be used exclusively for fortifying purposes by its holder on the premises for which issued. The term "wine" whenever used in this Act, shall mean the product obtained from the normal alcoholic fermentation of juice of sound ripe grapes, fruits and berries, (other than dried grapes, fruits and berries); or any such product fortified with grape brandy and containing not more than twenty-four per cent (24%) of alcohol by volume. It shall be lawful for any per-

son holding a winery permit to sell wine direct to any other permittee and to the ultimate consumer in unbroken packages for off premises consumption. The annual permit fee for such winery shall be Fifty Dollars (\$50.00) per annum.

A class, "B" winery permit shall authorize the holder thereof to manufacture, bottle, package, and label wine where the grapes, fruits, and berries used in the manufacture of said wine have been produced solely upon the premises of the person where such wine is manufactured. The annual permit fee for such class "B" winery shall be Ten Dollars (\$10.00) per annum.

Nothing in this Act shall be construed to prevent or prohibit the manufacture of wines by the fermentation of grapes, fruits and berries by an individual for his own consumption and where the same is not to be sold or offered for sale.

(d) Rectifier's Permit. For the purpose of this Act "rectifier" means and includes any person who rectifies, purifies, or refines distilled spirits or wines other than vermouth by any process other than as provided for on distillery premises, or who mixes such spirits, wine, or other liquors for sale under the name of whiskey, brandy, gin, rum, spirits, cordials, bitters, or any other name. A rectifier's permit shall authorize the rectification and sale of alcoholic spirituous liquors to the holders of wholesale permits only, unless such liquors are sold and delivered to persons outside the State. Such permit shall also authorize rectifiers to import into this State alcoholic spirits for exclusive use as ingredients in the preparation of alcoholic liquors, but shall not authorize the importation of any such spirits for resale without rectification. The annual permit fee shall be One Thousand Dollars (\$1,000.00).

(e) Wholesaler's Permit. A wholesaler's permit shall authorize the holder to purchase liquor from persons authorized by law to manufacture and sell the same in this State and to import such liquor from points outside the State and to sell the same to holders of permits in this State at wholesale. Such permit shall also authorize the holder thereof to sell and deliver such liquor to persons outside this State. It shall be unlawful for the holder of such permit to sell such liquor in this State to any other person than the holder of a permit lawfully entitling him to purchase and receive the same from such wholesaler. Except as is specifically authorized for rectifiers, beer and wine wholesalers and distillers, it shall be unlawful for any other person than the holder of a wholesaler's permit to import liquor into this State. A separate permit shall be obtained and a separate fee paid for each wholesale outlet in this State. Wholesale druggists possessing the necessary qualifications, as well as other qualified persons, shall be entitled to a wholesaler's permit. The annual permit fee shall be Twelve Hundred Fifty Dollars (\$1,250.00).

(f) Beer and Wine Wholesaler's Permit. A beer and wine wholesaler's permit shall authorize the holder thereof to pur-

chase alcoholic malt and vinous beverages containing alcohol in excess of four per centum (4%) by weight from brewers, wineries and wine manufacturers holding permits in this State, and to import such liquors from other States, and to sell the same at wholesale only to the holders of permits in this State who are authorized to purchase and receive the same; such permit shall also authorize the holder thereof to bottle, package or label wines purchased from wineries or wine manufacturers either within or without this State; such permit shall also authorize the holder thereof to sell and deliver such liquor to persons outside of this State. The annual fee shall be One Hundred Dollars (\$100.00).

(g) Package Store Permit: A package store permit shall authorize the holder thereof to purchase the liquor specified in the permit from the holders of winery, wholesaler's and beer and wine wholesaler's permits. Such permit shall authorize the holder to sell at retail to consumers in unbroken packages only and not for consumption on, at, or near the premises where sold; provided, that a hotel as herein defined which has secured a package store permit may deliver liquor at retail in unbroken packages to the rooms of bona fide guests of such hotel for consumption in such rooms. It shall be unlawful for the holder of a package store permit to break or open any package or container containing liquor on, at, or near his premises, or to sell, barter, exchange, deliver, or give away any drink or drinks of liquor to any person from a package or container that has for any reason been opened or broken on, at, or near his premises, or to sell liquor in packages containing less than one-half ( $\frac{1}{2}$ ) pint; provided, however, that malt or vinous beverages may be sold in "splits," in containers of not less than six (6) liquid ounces capacity; Provided that in the case of wines it shall be lawful for the holder of a package store permit to sell the same not for consumption on the premises where sold in quantities of fifty-two (52) gallons, or less, per sale, and for that purpose may break or open any package, receptacle or container and transfer said wine to another receptacle, package or container of the same or different size. Provided further, that the vendor in all such cases shall affix to the receiving receptacle, package or container a stamp to be issued by the Board stating that the contents has been withdrawn from a tax-paid container.

Package stores shall not have curtains, hangings, signs or any obstruction which will prevent a clear view at all times of the interior of the store; provided, nothing contained herein shall prevent window display of drug merchandise by a drug store having a package store permit.

Hotels and drug stores as hereinafter defined, as well as other qualified persons, may obtain package store permits. The annual permit fee for a package store permit shall be:

In cities and towns having a population of five thousand (5,000) inhabitants or less, according to the last preceding Fed-

eral Census, the fee shall be Fifty Dollars (\$50.00); in cities and towns having a population of more than five thousand (5,000) and less than twenty-five thousand (25,000) inhabitants, according to the last preceding Federal Census, the fee shall be One Hundred Twenty-five Dollars (\$125.00); in cities and towns having a population of more than twenty-five thousand (25,000) and less than seventy-five thousand (75,000) inhabitants, according to the last preceding Federal Census, the fee shall be One Hundred and Seventy-five Dollars (\$175.00); in cities and towns having a population of more than seventy-five thousand (75,000) inhabitants, according to the last preceding Federal Census, the fee shall be Two Hundred and Fifty Dollars (\$250.00); the fee outside of incorporated cities and towns shall be Fifty Dollars (\$50.00); Provided that the annual fee for package store permit to sell wines only shall be: In cities and towns having a population of two thousand (2,000) inhabitants or less, according to the last preceding Federal Census, the fee shall be Five Dollars (\$5.00); in cities and towns having a population of more than two thousand (2,000) and less than five thousand (5,000) inhabitants, according to the last preceding Federal Census, the fee shall be Seven Dollars and Fifty Cents (\$7.50); in cities and towns having a population of more than five thousand (5,000) and less than ten thousand (10,000) inhabitants, according to the last preceding Federal Census, the fee shall be Ten Dollars (\$10.00); in cities and towns having a population of more than ten thousand (10,000) inhabitants, according to the last preceding Federal Census, the fee shall be Twelve Dollars and Fifty Cents (\$12.50). The fee for a package store permit for wine only outside the limits of an incorporated city or town shall be Five Dollars (\$5.00).

The Board is prohibited from issuing more than five package store permits to any one person.

(h) Agent's Permit. No person shall act as agent or salesman for the sale of, or for taking or soliciting orders for the sale of, any liquor irrespective of whether such sale is to be made within or without the State unless such person shall have an agent's permit. In applying for such permit such agent shall set forth the name and address of each and every person whom he represents, and shall furnish such other information as may be required by the Board. It shall be unlawful for any agent to represent any person whose name does not appear upon said permit as his employer, or to act as agent or salesman for any person not named therein. The annual fee for such permit shall be Five Dollars (\$5.00).

(i) Industrial Permit. No provision of this Act shall apply to alcohol intended to be used for industrial, mechanical and scientific purposes. Industrial permits may be issued to persons desiring to import, transport and use alcohol for use in the manufacture and sale of any of the following, tax free:

- (1) Denatured alcohol;

FORTY-FOURTH LEGISLATURE—SECOND CALLED SESSION. 1807

(2) Patent, proprietary, medicinal, pharmaceutical, antiseptic and toilet preparations;

(3) Flavoring extracts, syrups, condiments and food products;

(4) Scientific, chemical, mechanical, industrial, and medicinal products and purposes.

It shall be unlawful for any person to knowingly sell any of the products enumerated in paragraphs (1), (2), (3), and (4) for beverage purposes or to sell any of the same under circumstances from which he might reasonably deduce the intention of the purchaser to use them for such purpose.

It shall be unlawful for any person to purchase, transport, or use alcohol for any purpose enumerated in this section unless and until he shall have secured an industrial permit; provided, however, that nothing in this section shall restrict the purchase, sale or possession without any permit therefor of denatured alcohol by any person after the same has been so produced and so long as it shall retain its character as denatured alcohol. The annual fee for an industrial permit shall be Ten Dollars (\$10.00).

(j) Carrier's Permit. The word "carrier" when used in this section shall mean and include steam and electric railway carriers and common carrier motor carriers operating under a certificate of convenience and necessity issued by the Railroad Commission of Texas and/or such certificates issued by the Interstate Commerce Commission. The holder of such certificates shall be authorized to transport liquor into and out of this State and between points within this State. Such carriers shall furnish such information concerning the transportation of liquor into this State or between points in this State as shall be required of them by the Board. It shall be unlawful for any such carrier to transport and deliver liquor to any person in a dry area in this State unless the same be for a lawful purpose as defined in this Act.

The restrictions contained in this section shall not apply to steam railway carriers and certificated common carrier motor carriers when in the course of an interstate or foreign shipment of liquor it is necessary for them to cross this State in the course of such transportation.

Such a carrier shall be entitled to a Carrier's Permit upon payment of Five Dollars (\$5.00).

(k) Private Carrier's Permit. Brewers, distillers, wineries, rectifiers, wholesalers, and beer and wine wholesalers, shall be entitled to transport liquor from the place of sale or distribution to the purchaser, upon vehicles owned in good faith by such permittees when such transportation is for a lawful purpose; provided, however, that such permittees shall not be permitted to engage in the business of transporting for hire such liquor in violation of the motor carrier laws of this State, and any such permittee desiring to engage in such business shall first secure a certificate or permit, as the case may be, from the

Railroad Commission of Texas under the terms of the motor carrier laws, and shall be required to comply with the provisions of such laws. Motor vehicles used for such transportation shall be fully described in the application for a private carrier permit and such application shall contain all information which shall be required by the Board. Motor vehicles used by such permittees for the transportation of liquor within this State shall have printed or painted on both sides of said vehicles the trade or business name of the holder of the permit and also the number of the private carrier permit. It shall be unlawful for any such permittee above named to transport liquors in any vehicle not fully described in this application for the permit. Any such permittee violating any rule or regulation promulgated in pursuance of this section shall have his private carrier permit cancelled and shall not be permitted to transport any liquor in any vehicles owned by him for a period of two (2) years. It shall further be unlawful for any such permittee to transport liquor without first having obtained a private carrier permit. The annual fee for such permit shall be Five Dollars (\$5.00).

(1) Local Cartage Permit. The Board is hereby authorized to issue Local Cartage Permits to warehouse or transfer companies desiring to transport liquor for hire within the corporate limits of any city or town within this State. It shall be unlawful for any person to transport liquor within any city or town unless and until he shall have secured such permit or to transport the same in violation of the motor carrier laws of this State. In the case of local cartage, liquors shall not be transported by the holder of such Local Cartage Permit unless and until a description of the vehicle or vehicles used in such transportation shall be furnished as may be required by the Board; and each such vehicle shall be plainly marked or lettered in such manner as to plainly indicate that such vehicle is being used for the transportation of liquors by the holder of a Local Cartage Permit. The transportation of liquor by the holder of a Local Cartage Permit in any vehicle not so described and marked shall be unlawful and shall constitute grounds for the cancellation of such permit. In the event such local Cartage Permit is cancelled for a violation of this provision or for violation of any rule or regulation promulgated in pursuance of this Section, such cancellation shall operate as a bar both as against all of the vehicles owned and operated by such local cartage permittee, as well as against the holder of such permit for a period of two (2) years. It shall be unlawful for the holder of a Local Cartage Permit to transport liquor for hire between incorporated cities or towns in this State unless and until he shall have fully complied with the requirements of the motor carrier laws of this State governing the issuance of "carrier" permits. The annual fee for Local Cartage permits shall be Five Dollars (\$5.00).

FORTY-FOURTH LEGISLATURE—SECOND CALLED SESSION. 1809

(m) Storage Permit. The holders of brewery, distillery, winery, rectifier, wholesaler and beer and wine wholesaler permits shall be authorized to secure Storage Permits for one or more private warehouses for storage purposes at their place or places of business for liquors owned by them without being required to pay any additional permit fees. Such permittees shall also be authorized to store liquors owned by them in public bonded warehouses that have secured storage permits as hereinafter provided. Each separate warehouse, public or private, used by any permittee for storage purposes shall be separately licensed. No permit shall be granted for the storage of liquor in any dry area. When liquors are stored by permittee at any warehouse, public or private, it shall be his duty to report the quantity and character of liquor so stored to the Board. Warehouses, both public and private, shall report to the Board within twenty-four (24) hours any and all withdrawals of liquor from storage, giving the quantity and character of liquor so withdrawn, by whom withdrawn, where and how shipped, together with a statement of the quantity and character of liquor remaining in storage to the credit of the account from which withdrawal was made, it being the intent of this Section to provide the Board with a perpetual inventory of liquor stocks in storage at all times. Permittees desiring to store liquors in public or private warehouses shall furnish all information which shall be required and observe all regulations which may be promulgated in pursuance of this Section. The annual permit fee to be paid by permittees for storage in public warehouses shall be Fifty Dollars (\$50.00) and no liquor shall be stored in other than warehouses which have secured a permit as hereinafter required.

All warehouses, both public and private, desiring to receive and store liquor for permittees shall apply for a permit and shall furnish such information concerning liquor stored and withdrawn from such storage as may be required under any rule or regulation adopted in pursuance of this Section. Such warehousemen shall give a surety bond in such amount as may be required of them. The annual permit fee for public warehousemen receiving and storing liquor shall be Fifty Dollars (\$50.00) and no permit shall be issued to a public warehouse other than a bona fide bonded warehouse that derives at least fifty per cent (50%) of its gross revenue from the storage and handling of household goods, or merchandise other than liquors. Annual permits for private warehouses may be issued to holders of brewery, distillery, winery, rectifier, wholesaler, or beer and wine wholesaler permits, for the storage of their own liquors on their own premises without additional fees.

(n) Medicinal Permit. Retail druggists, hospitals, sanatoria and other like businesses and institutions shall be entitled to receive a permit to purchase and sell to qualified persons liquors for medicinal purposes. Medicinal permits shall allow the holders thereof to purchase liquor for medicinal purposes from only

wholesale druggists holding wholesaler's permits under subsection (e) of this Section. Such businesses and institutions shall secure permits before handling liquor and no such permits shall be issued for any other than strictly medicinal purposes; provided that any drug store applying for a permit shall have been in operation for a period of two (2) years prior to the date of such application; and provided, further, that nothing contained herein shall prohibit or interfere with bona fide drug stores or pharmacies obtaining a supply of alcohol for the manufacture of medicinal preparations unfit for beverage use, or the compounding of prescriptions in the practice of pharmacy. Nor shall anything contained herein prevent or prohibit bona fide or chartered schools, colleges, or universities from obtaining alcohol for scientific or laboratory use. Such businesses and institutions shall keep such records of sales and purchases as may be required by regulations issued in pursuance of this Section.

No liquors for medicinal purposes shall be dispensed, sold, or delivered to any person in this State except upon a prescription issued in the legitimate practice of medicine by a physician licensed to practice medicine in the State of Texas and who is not addicted to the use of any narcotic drug. Such physician shall not prescribe more than one quart of liquor to any person at any one time. A copy of each prescription issued by a physician, shall be preserved by the pharmacist or druggist filling such prescription for a period of two (2) years. Any physician and/or druggist conspiring with a druggist or physician for the handling of prescriptions to be used for the dispensing of liquor for beverage purposes shall both be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), and each prescription so issued shall constitute a separate offense. Prescriptions for liquor must be signed by the physician, using his legal signature as he customarily signs it, and each prescription must bear the date and name and address of the patient. Prescriptions for liquor must be filled within twenty-four (24) hours after the time of issuance. Such prescription so filled shall be subject to inspection; and if any druggist or pharmacist shall sell any liquor without a physician's prescription therefor, or for any other purpose than medicinal purposes, his permit shall be cancelled and he shall be denied the right to handle liquor for medicinal or any other purpose for a period of two (2) years. Any physician who shall prescribe liquor for any other than medicinal purposes shall be denied the right to issue prescription for liquor for a period of two (2) years. Physicians desiring to issue prescriptions for liquor for medicinal purposes shall apply for and obtain a permit therefor. It shall be unlawful for a physician to issue a prescription for liquor for medicinal or other purposes unless and until he shall have obtained such a permit. The annual permit fee for physician's permit shall be Five Dollars (\$5.00). The annual permit fee for druggist's or phar-



FORTY-FOURTH LEGISLATURE—SECOND CALLED SESSION, 1811

macist's permits in dry areas shall be Fifty Dollars (\$50.00); in wet areas the annual permit fee for druggists or pharmacists shall be the same as the annual permit fees for package stores in such areas.

(o) All permit fees levied by this Act except Wine and Beer Retailer's Permits shall be paid in advance for one year unless such fee be collected for only a portion of the year. In such event, the fee required shall cover the period of time from the date of the permit to midnight of August 31st succeeding, and only the proportionate part of the fee levied for such permit shall be collected. The fractional part of any month remaining shall be counted as one month in calculating the fee that shall be due.

(p) Except as to Agent's, Industrial, Medicinal, Carrier's, Private Carrier's, Local Cartage and Storage Permits, and as to such Wine and Beer Retailer's Permits as shall be issued to operators of dining cars, and Class "B" Winery Permits, the Commissioners' Court of each County in this State shall have the power to levy and collect from every person that may be issued a permit hereunder in said county a fee equal to one-half ( $\frac{1}{2}$ ) of the State fee; and the city or town wherein the permittee is domiciled shall have the power to levy and collect a fee not to exceed one-half ( $\frac{1}{2}$ ) of the State fee, but no other fee or tax shall be levied by either. But nothing herein contained shall be construed as preventing the levying, assessing, and collecting general ad valorem taxes on the property of the said persons.

(q) Wine and Beer Retailer's Permit. The Board is authorized to issue Wine and Beer Retailer's Permits. The holders of such permits shall be authorized to sell from broken packages or unsealed containers for consumption on the premises where sold, vinous and malt beverages containing in excess of one-half ( $\frac{1}{2}$ ) of one per centum (1%) of alcohol by volume, and not more than fourteen per centum (14%) of alcohol by volume.

The annual permit fee for such permit shall be Thirty Dollars (\$30.00); provided that if same is issued for a railway dining, buffet or club car it shall be Five Dollars (\$5.00) for each car; provided, however, that such permit shall be inoperative in any dry area, as the same is defined in this Act.

Wine and Beer Retailer's Permits, except those to operators of railway dining, buffet or club cars, shall be applied for and fees paid in the manner provided in Article II of this Act for licensing retail beer dealers; and every Wine and Beer Retailer's Permit shall authorize the holder thereof to also sell beer containing not more than four per centum (4%) of alcohol by weight without need of separate license; provided, further, that all provisions of said Article II relating to refund of fees shall be applicable to such permits.

(r) No person holding a package store permit shall be issued a wine and beer retailer's permit or a beer retailer's license under Article II of this Act; nor shall a person holding a wine

and beer retailer's permit or a beer retailer's license under Article II of this Act be issued a package store permit. It shall be unlawful for any person authorized to sell wine or beer for consumption on the premises where sold, to have in his possession on such premises any distilled spirits of any character and or liquor produced by the process of distillation or liquor containing alcohol in excess of fourteen per centum (14%) by volume; provided however that the restrictions in this subdivision and in Section 3 (c) of this Act shall not apply to hotels so as to prohibit such hotels from holding package store permits as well as wine and beer retailer's permits; provided, that if any hotel owner, operator, or manager thereof, shall knowingly or carelessly permit to be used or drunk in any place covered by the wine and beer retailer's permit held by such hotel any intoxicating liquor not permitted to be sold under such wine and beer retailer's permit, the Board or the Administrator shall on a finding of fact by the Board or Administrator that such use or drinking has been so permitted, cancel and revoke both the package store permit and the retailer's permit held by such hotel, and such hotel shall not be eligible for one(1) year from the date of such cancellation to hold directly or indirectly either a retailer's permit or a package store permit. It shall be the duty of the Board to adopt rules and regulations absolutely segregating the conducting of business by hotels under such permits.

(s) All permits provided for in Article I of this Act, except wine and beer retailer's permits, shall be applied for and obtained from the Board. Notice of all such applications for permits (except wine and beer retailer's permits) shall be given to the County Judge of the County wherein applicant's place of business is located. Such notice shall be given by the Board. The Board shall prepare and furnish forms for all such applications. Each application shall be accompanied by a cashier's check or money order for the amount of the fee due the State, payable to the order of the State Comptroller. In the event such application be rejected, such check or money order shall be returned to the applicant.

(t) It shall be unlawful to issue a permit authorizing the manufacture, transportation or sale of liquor of a type, or of an alcoholic content which is illegal in the area where such permit is sought or where any act is to be performed thereunder which is illegal in the prescribed area.

SEC. 15a. Nothing in this Act shall be construed as limiting the right of any minister, priest or rabbi, or religious organization from obtaining sacramental wine for sacramental purposes only, directly from any lawful source whatsoever, whether from within the limits of the State of Texas or from outside the State; nor shall any fee or tax be charged, directly or indirectly, for the exercise of this right. The Board shall have the power and authority to make rules and regulations concerning the import-

Forty-fourth Legislature—Second Called Session, 1813

ing of any such wine, for the purpose of preventing any unlawful use of such right.

SEC. 16. All bonds required by this Act shall be executed by a surety company duly authorized and qualified to do business in this State. The Board shall not cancel any surety bond until said surety company shall have paid and discharged in full all of its liability upon said bond to the State to the date of said cancellation. The holders of all permits except carriers and retailers of wine and beer and package store permittees authorized to sell wine only shall be required to make bonds in sums not less than One Thousand Dollars (\$1,000.00) and not exceeding Twenty-five Thousand Dollars (\$25,000.00). The Board in its discretion may fix the amount of bond which shall be required for each class of permittees. All bonds required of permittees shall be payable to the State of Texas conditioned that so long as the applicant holds such permit unrevoked he will not violate any of the provisions of any of the laws of this State relating to the traffic in, transportation, sale or delivery of liquor or any of the valid rules or regulations of the Board, and in the case of such permittees as are required to account for taxes and fees that such permittees will account for and pay all permit fees and taxes levied by this Act.

SEC. 17. No person holding a permit under this Act that authorizes the retail sale of liquor, and no officer, employee, or agents thereof shall acquire or hold or own or possess either in his own name or in the name of any other person, by means of the ownership of corporate stock in a corporation, holding any wholesaler's permit, brewer's, distiller's, winery, rectifier's or beer and wine wholesaler's permit or by means of any participating interest or other interest, or by means of any title or device or trustee-ship or otherwise, any financial interest in or to any of said last named permits, or in and to the business thereof, or in and to any company or corporation holding any such permits nor shall the holders of permits to distill, rectify, or manufacture liquor or engage in the business of selling such liquor at wholesale own any such interest in the business or premises of the holder of a permit authorizing the retail sale of liquor. The permit of any person authorizing him to sell liquor at retail who shall have any such interest in the business of any such permittee, or who shall knowingly permit any of his officers, employees or agents to so hold the same, shall be subject to cancellation by the Board.

SEC. 17a. It shall be unlawful for any person to sell or offer for sale in this State any alcoholic liquors under the name or brand of "whiskey," or that has printed or otherwise labeled upon the bottle or container containing such alcoholic liquor the term "whiskey," unless such alcoholic liquor be an alcoholic distillate from fermented mash of grain or be a combination, mixture or blend of such distillates from fermented grains, to which there has been added neither alcohol nor other spirits distilled from material other than grain. This section does not apply

to foreign types of whiskey that were manufactured in and in compliance with the laws of foreign countries.

SEC. 18. No person who has not been a citizen of Texas for a period of three (3) years immediately preceding the filing of his application therefor shall be eligible to receive a permit under this Act. No permit shall be issued to a corporation unless the same be incorporated under the laws of the State and unless at least fifty-one (51%) per cent of the stock of the corporation is owned at all times by citizens who have resided within the State for a period of three years and who possess the qualifications required of other applicants for permits; provided, however, that the restrictions contained in the preceding clause shall not apply to domestic corporations, or to foreign corporations that were doing business in this State under charter or permit prior to August 24, 1935. Partnerships, firms, and associations applying for permits shall be composed wholly of citizens possessing the qualifications above enumerated. Any corporation (except carrier) holding a permit under this Act which shall violate any provision hereof, or any rule or regulation promulgated hereunder, shall be subject to forfeiture of its charter and it shall be the duty of the Attorney General, when any such violation is called to his attention, to file a suit for such cancellation in a District Court of Travis County. Such provisions of this section as require Texas citizenship or require incorporation in Texas shall not apply to the holders of agent's, industrial, medicinal and carrier's permits.

SEC. 19. If any permittee shall be convicted for the violation of any provision of this Act, or for any rule or regulation of the Board, and no appeal is pending, his bond shall be forfeited and the Board may, in its own name, institute action upon such bond for the benefit of the State. Upon proof of such conviction the Court before whom such suit is brought shall render judgment in favor of the Board for the amount of the taxes, fine, costs and fifteen (15) per centum of the face value of the bond, costs and disbursements.

SEC. 20. All persons having any liquor on hand in this State, shall, within thirty (30) days from the effective date of this Act make a true inventory and report of such liquor to the Board and shall pay the taxes herein levied and assessed. Failure to report and pay the taxes on any such liquor shall render the same subject to confiscation by the Board as is herein provided, and shall operate as a bar to such person receiving any character of permit under this Act.

SEC. 21. There is hereby levied and imposed in addition to the other fees and taxes levied by this Act the following:

(a) A tax of eighty (80c) cents per gallon on each gallon of spirituous alcoholic liquor, sold or offered for sale in this State; provided the minimum tax on any package of spirituous alcoholic liquor shall be five cents (5c).

FORTY-FOURTH LEGISLATURE—SECOND CALLED SESSION. 1815

(b) A tax of two cents (2c) on each gallon of still wine that does not contain over fourteen per cent (14%) of alcohol by volume sold or offered for sale in this State.

(c) A tax of five cents (5c) on each gallon of still wine containing more than fourteen per cent (14%) and not more than twenty-four per cent (24%) of alcohol by volume sold or offered for sale in this State.

(d) A tax of fifty cents (50c) on each gallon of still wine containing alcohol in excess of twenty-four per cent (24%) by volume, sold or offered for sale in this State.

(e) A tax of twenty-five cents (25c) on each gallon of natural sparkling wines sold or offered for sale in this State.

(f) A tax of twenty-five cents (25c) on each gallon of artificially carbonated wine sold or offered for sale in this State.

(g) A tax of fifteen (15c) cents on each gallon of malt liquor containing alcohol in excess of four (4) per cent by weight sold or offered for sale in this State.

The tax herein levied shall be paid by affixing stamps on each bottle or container of liquor. Said stamps shall be affixed in strict accordance with any rule or regulation promulgated in pursuance of this Act.

It shall be the duty of the holders of wholesaler's, beer and wine wholesaler's and winery permits to affix said stamps on each bottle or container of liquor and to cancel the same by writing or printing thereon his name except as otherwise herein provided. In the case of wines the stamp shall be affixed to the original container and no further stamps shall be required if a portion or the whole of said contents of said original container be removed for resale as provided for in this Act. In case any bottle containing liquor be enclosed in a sealed metal container the affixing and cancellation of said stamps may be governed by rules and regulations promulgated hereunder that may allow for the affixing of said stamps to such metal container; provided that when stamps have been once affixed, as provided in this Act, no other or further stamps shall be required, regardless of how often such liquor may be sold or resold within the State; provided further that the stamps shall be affixed in such manner that their removal will require continued application of steam or water. Every holder of a wholesaler's permit shall, upon receipt of a shipment of liquor for sale within this State, under the provisions of this Act, within twenty-four (24) hours after receiving the same and before it is offered for sale, prepare a true invoice thereof and give such other information in respect thereto as may be required by rules and regulations. Any holder of a wholesaler's permit, a distiller's permit, rectifier's permit, beer and wine wholesaler's permit, winery permit, or a brewer's permit, having in possession any liquor intended for shipment to any place without the State, shall keep such liquors in a separate compartment from that of liquors intended for sale within the State so that the same may be easily inspected and shall attach to each such

package of liquor so intended for shipment without the State a stamp of the kind and character that shall be required by proper rule or regulation denoting that the same is not intended for sale within the State. When such liquors are so kept and so stamped no tax on account thereof shall be charged. For defraying the expenses thereof, a charge of the sum of Twenty-five cents (25c) shall be made for every such stamp. All such permittees authorized to transport liquor beyond the boundaries of this State shall furnish to the Board duplicate copies of all invoices for the sale of such liquors within twenty-four (24) hours after such liquors have been removed from their place of business.

SEC. 21a. Stamps for spirituous liquor shall be issued only in multiples of the rate assessed for each half pint or fractional part thereof; stamps for wine shall be issued only in multiples of the rate assessed for each quart or fractional part thereof; stamps for malt liquors containing alcohol in excess of four per cent (4%) by weight shall be issued in multiples of the rate assessed for each 12 fluid ounces, or fractional part thereof; provided that where any such liquors are contained in containers of one-fifth ( $\frac{1}{5}$ ) gallon, stamps shall be issued therefor at the assessed rate for each such type of liquor; provided further, the taxes herein levied and assessed shall be paid and collected by stamps as provided in this paragraph.

SEC. 22. If any permittee shall be convicted for the violation of any provision of this Act, or if he shall violate any valid rule or regulation of the Board, or shall fail to remit seasonably, any money due the State, his surety on his bond required under this Act shall be liable for all fines and costs imposed and for all taxes due the State, and in addition thereto, a penalty amounting to fifteen per cent (15%) of the amount of the bond. When such conviction becomes final, or when such liability to the State occurs, or when any valid rule or regulation of the Board is violated, it shall be the duty of the Attorney General to institute suit on such bond for the benefit of the State, and when a recovery is had upon the bond, the judgment of the Court shall recite that the permit of the principal is forfeited. When a permittee has been convicted of violating any section of this Act, the Board shall forfeit such permit and no appeal from such action shall be allowed.

Nothing in this Act shall be construed to impose upon the surety or any such bond a greater liability than the total amount thereof or the amount remaining unextinguished by any prior recovery or recoveries, as the case may be.

The surety may terminate its liability under such bond by giving thirty days' written notice thereof, served either personally or by registered mail, to the principal and to the Board; and upon giving such notice the surety shall be discharged from all liability under such bond for any act or omission of the principal occurring after the expiration of thirty days from the date of service of such notice. Unless on or before the expira-

tion of such period the principal shall duly file a new bond in like amount and conditioned as the original in substitution of the bond so terminated, the permit of the principal shall likewise terminate upon the expiration of such period.

SEC. 23. Whenever the term "dry area" is used in this Act it shall mean and refer to all counties, justice precincts, incorporated cities or towns wherein the sale of intoxicating liquors had been prohibited by valid local option elections held under the laws of the State in force at the time of the taking effect of Section 20, Article XVI, Constitution of Texas, in the year 1919. It likewise shall mean and refer to any such areas where such sale shall be prohibited under the terms of this or any other Act.

The term "wet area" shall mean and refer to all other areas of the State.

As to any particular type of liquor, each county, justice precinct, incorporated city or town within this State shall be deemed to be a "dry area" unless such county, justice precinct, city or town, was a "wet area" at the time Section 20 of Article XVI of the Constitution became effective and has not since said time changed its status, or unless the sale of that particular type of liquor has been legalized by local option election in such county, justice precinct, city or town, since said time.

The term "wet area" shall be construed as including in each particular instance only liquors of a type or liquors not exceeding in alcoholic content that which have been legalized by a valid local option election in the prescribed area.

The word "person" or "persons," whenever used in this Act, shall be held and construed to mean and include persons and firms, associations and corporations, whether acting by themselves or by a servant, agent or employee. The Courts of this State shall take judicial knowledge of the status of wet and dry areas as herein defined in any criminal prosecution instituted, either by complaint, information or indictment.

SEC. 23a. It shall be unlawful for any person to possess liquor for the purpose of sale in any dry area. Possession of more than one quart of liquor in such area shall be prima facie evidence that such liquor is possessed for the purpose of sale.

SEC. 24. In any city where the sale of liquor as herein defined is prohibited by its charter from being sold in its residence section, or any part thereof, such charter amendment shall remain valid and continue effective until such time as said charter provision may be repealed or amended as provided by law.

SEC. 25. No sale or delivery of liquor shall be made on or from the premises of the holder of any permit (except upon the prescription of a duly licensed physician):

(a) Between 12 o'clock p. m., and 7 o'clock a. m., on any day;

(b) On any day on which any election is being held either State or National, in the District in which the permittee is located;

(c) On any day on which an election either county or municipal, is held in the municipality in which the permittee is located;

(d) On Sundays;

(e) The Commissioners Court of any county in the territory thereof outside of incorporated cities and towns and the governing authorities of any city or town within the corporate limits of any such city or town may prohibit the sale of intoxicating liquor by any dealer where the place of business of any such dealer is within three hundred (300) feet of any church, school or other educational institution, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

SEC. 26. It shall be unlawful to employ anyone to sell liquor who is under the age of twenty-one years; provided, however, that this shall not apply to cafes and dining rooms where drinks are sold, incidentally to the conduct of said business, not in excess of fourteen (14%) per cent of alcohol by volume, and drug stores lawfully selling liquor. It shall further be unlawful for any person to knowingly sell, any liquor to any person under the age of twenty-one years, or to any person who is visibly intoxicated, or to any person known to be an habitual drunkard or to any insane person.

SEC. 27. No person shall transport into this State or between points in this State upon any public highway any liquor unless the person accompanying and in charge of such shipment shall have present and available for exhibition such bills of lading, evidence of ownership, or shipment, as the Board may, by rules and regulations require, and no person shall refuse to exhibit or permit to be read or examined any such bill of lading, evidence of ownership, or shipment, by any agent or employee or deputy of the Board or any peace officer of this State.

SEC. 28. If any person shall forge or counterfeit or cause or permit to be forged or counterfeited any stamp, die, plate, official signature, certificate, evidence of tax payments, permit, license, or other instrument, or any part of any stamp, die, plate, official signature, certificate, evidence of tax payment, permit, license, or other instrument, which has been provided for in this Act or which shall hereafter be provided for, or shall knowingly utter, use or pass the same, he shall be deemed guilty of a felony and shall be punished by confinement in the State Penitentiary for any term of years not less than one (1) nor more than five (5).

SEC. 29. Any room, building, boat, structure, or place of any kind where liquor is sold, manufactured, bartered, or given away in violation of this Act, or of any rule, or regulation of the Board, or where persons are permitted to resort for the purpose of drinking liquor in violation of the law, or any place where such beverages are kept for sale, barter, or gift in violation of law, and all liquor and all property kept and used in



said place, hereby are declared to be a common nuisance and any person who maintains or assists in maintaining such common nuisances, shall be guilty of a violation of this Act. Any county, or district attorney, or the Board, or any agent or employee of this Board in the county where such nuisance exists, or is kept, or maintained, may maintain an action by injunction in the name of the State, or the Board to abate and to temporarily and permanently enjoin such nuisances. Such proceedings shall be guided by the rules of other injunction proceedings, except that the plaintiff shall not be required to give bond in such action and upon final judgment against the defendant the Court shall order that said room, house, building, structure, boat, or place of any kind shall be closed for a period of one year, or closed for a part of said time and until the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the Court making the order, in the penal sum of not less than One Thousand Dollars (\$1,000) payable to the State, and conditioned that liquor will not thereafter be manufactured, possessed, sold, bartered, or given away, or furnished, or otherwise disposed of therein, or kept thereon, or therein, with the intent to sell, barter, or give away, or otherwise dispose of same contrary to law, and that he will pay all fines, costs, and damages assessed against him for any violation of this Act. If any conditions of such bond be violated the whole amount may be recovered as a penalty for the use of the county wherein the premises are situated.

SEC. 30. Any liquor found in the possession of any one in this State not having affixed to the bottle, or container the stamps required by this Act, except in the case of wines if satisfactory proof be given that the same has been withdrawn from a tax-paid container, or unless it has affixed to the bottle, or container a stamp stating that the same has been withdrawn from a tax-paid container (the board shall promulgate regulations for the affixing of such stamps), is hereby declared to be contraband and the same may be seized by the Board, or any one of its agents or employees, or by any peace officer, without warrant, and the sheriff of the county in which such seizure is made shall take possession of said liquor so seized for sale at public auction to the highest bidder after due advertisement for a period of ten (10) days, but no sale shall be made to any person other than the holder of a wholesaler's or package store permit, and the Sheriff, before the delivery of any liquor so seized to any purchaser, shall require the purchaser to affix the proper amount of stamps to the individual containers as herein provided. Any other confiscation of liquor authorized by the provisions of this Article shall be handled in like manner. The costs of confiscation and sale shall be paid out of the proceeds derived from such sale. After the costs of such sale have been paid any balance remaining shall be remitted to the Board. It is further provided, that any liquor transported in violation of any provision of this Article shall be subject to

confiscation and the same shall be sold in the manner herein provided. It is further provided, that no liquor of questionable purity and content shall be sold at public auction, but the same shall be destroyed by any officer so seizing the same upon an order of the District Court of the county where the same was seized if such Court be of the opinion that such liquor should, for such reason, be destroyed. It is further provided, that no liquor sold at public auction as herein provided shall be delivered within a period of five (5) days after such sale, during which time the Board may, in its discretion, reject any bids and order the liquor resold until a satisfactory bid is had.

SEC. 31. It shall be the duty of all peace officers of this State, including city, county and State, to enforce all provisions of this Act and to assist the Board in detecting violations of this Act and apprehending offenders and of County Courts, in case of violation to make recommendations to the Board for revocation of permits. Whenever any officer shall arrest any person for violation of this Act, he shall take into his possession all liquor which the person so arrested has in his possession, or on his premises, which is apparently being used in violation of this Act. In the event the person so arrested is convicted finally, and it is found that the said liquor has been used in violation of this Act, the same shall be forfeited to the Board and shall be delivered by the Court, or officer to it to be disposed of as herein provided.

SEC. 32. The Commissioners Court of each county in the State upon its own motion may order an election to be held by the qualified voters in said county, to determine whether or not the sale of liquors shall be prohibited or legalized in such county, any such Court shall order a local option election whenever petitioned to do so by as many as ten (10) per cent of the qualified voters of said county, or of any justice precinct, city or town, taking the votes for Governor at the last preceding general election as the basis for determining the qualified voters in any such county, or political subdivision. After the first local option election held as provided in this Act, in any county, justice precinct, incorporated town, or city, no subsequent election upon the same issue in the same political subdivision shall be held within one (1) year from the date of the preceding local option election in said county, or said political subdivision of said county.

SEC. 33. When the Commissioners Court shall order an election as herein provided for, it shall be the duty of said Court to order such election to be held at the voting places within such subdivision or county upon a day not less than ten (10) nor more than twenty (20) days from the date of said order, and the order thus made shall express the object of such election and shall be held to be prima facie evidence that all the provisions necessary to give it validity or to clothe the Court with jurisdiction to make it valid, have been duly complied with,

FORTY-FOURTH LEGISLATURE—SECOND CALLED SESSION. 1821

provided that said Court shall appoint such officers to hold such elections as now required to hold general elections.

SEC. 34. The Clerk of said Court shall post or cause to be posted at least one copy of said order in each election precinct in such political subdivision or county affected, for at least six (6) days prior to the day of election, which election shall be held and the return thereof made in conformity with the provisions of the General Laws of the State, and by the election officers appointed and qualified under such laws.

SEC. 35. (a) At said election the vote shall be by official ballot which shall have printed or written at the top thereof in plain letters the words "Official Ballot." Said ballot shall have also written or printed thereon the words "For the sale of liquor," and the words, "Against the sale of liquor," or words appropriate to the election ordered and the Clerk of the County Court shall furnish the presiding officer of each such voting box within such subdivision or county with a number of such ballots, to be not less than twice the number of qualified voters at such voting boxes and the presiding officer of each voting box shall write his name on the back of each ballot before delivering the same to the voter and each person offering to vote at each election shall, at the time he offers to vote, be furnished by such presiding officer with one such ballot; and no voter shall be permitted to depart with such ballot and shall not be assisted in voting by any person except such presiding officer or by some officer assisting in the holding of such election, under the direction of such presiding officer when requested to do so by such voter.

(b) Those who favor the sale of liquor shall erase the words "Against the sale of liquor," by making a pencil mark through same, and those who oppose it shall erase the words "For the sale of liquor," by making a pencil mark through same. No ballot shall be received or counted by the officers of such election that is not an official ballot, and that has not the name of the presiding officer of such election written thereon in the handwriting of such presiding officer as provided by this Act.

SEC. 36. The officers holding such election shall, in all respects not herein specified, conform to the General Election Laws in force regulating elections and after the polls are closed proceed to count the votes and within three (3) days thereafter make due report of said election to the aforesaid Court. The provisions of the General Election Laws shall be followed in calling and conducting said election where not inconsistent herewith:

SEC. 37. Said Court shall hold a Special Session on the fifth day after the holding of said election, or as soon thereafter as practicable, for the purpose of canvassing the votes and certifying the results, and if a majority of the voters are "Against the sale of liquor" said Court shall immediately make an order declaring the results of said vote, and absolutely prohibiting the sale of liquor within the said political subdivision after thirty

(30) days from the date of declaring the results thereof, and thereafter until such time as the qualified voters therein may thereafter at the legal election held for such purpose by a majority vote decide otherwise; and the order thus made shall be held to be prima facie evidence that all the provisions of laws have been complied with in giving notice of and holding said election and counting and returning the votes, and declaring the results thereof.

SEC. 38. The order of said Court declaring the result and prohibiting the sale of liquor shall be published by the posting of said order at three (3) public places within the county or the political subdivision in which the election was held, which fact shall be entered by the County Judge on the minutes of the Commissioners Court. An entry thus made or a copy thereof certified under the hand and seal of the Clerk of Court shall be prima facie evidence of such posting.

SEC. 39. If a majority voting at such election vote "For the sale of liquor," the Court shall make an order declaring the results and have the same entered of record in the office of the Clerk of said Court, whereupon it shall be lawful in such political subdivision to manufacture, sell and distribute liquor in accordance with the terms of this Act until such time as the qualified voters therein may thereafter, at a legal election held for that purpose by a majority vote, decide otherwise, and the order thus made shall be held to be prima facie evidence that all the provisions of law have been complied with in giving notice of and holding said election and counting and returning the votes and declaring the results thereof. It shall be the duty of the County Clerk, within three (3) days after the results of any such election have been declared to certify such results to the Secretary of State at Austin.

SEC. 40. The Commissioners Court upon its own motion may, or upon petition as herein provided shall, as provided in Section 32, order local option elections for the purpose of determining whether liquor of the various types and alcoholic contents herein provided shall be legalized or prohibited.

In areas where the issue or issues to be submitted pertain to the legalization of the sale of liquor, one or more of the following issues may be submitted:

(a) "For legalizing the sale of vinous and malt liquors that do not contain alcohol in excess of four per cent (4%) by weight," and "Against legalizing the sale of vinous and malt liquors that do not contain alcohol in excess of four per cent (4%) by weight."

(b) "For legalizing the sale of vinous and malt liquors that do not contain alcohol in excess of fourteen per cent (14%) by volume," and "Against legalizing the sale of vinous and malt liquors that do not contain alcohol in excess of fourteen per cent (14%) by volume."

(c) "For legalizing the sale of all liquors," and "Against legalizing the sale of all liquors."

FORTY-FOURTH LEGISLATURE—SECOND CALLED SESSION. 1823

In areas where the issue or issues to be submitted pertain to the prohibition of the sale of liquor of any type or types, one or more of the following issues may be submitted:

(a) "For prohibiting the sale of all liquors, except vinous and malt liquors that do not contain alcohol in excess of four per cent (4%) by weight," and "Against prohibiting the sale of all liquors, except vinous and malt liquors that do not contain alcohol in excess of four per cent (4%) by weight."

(b) "For prohibiting the sale of all liquors except vinous and malt liquors that do not contain alcohol in excess of fourteen per cent (14%) by volume," and "Against prohibiting the sale of all liquors, except vinous and malt liquors that do not contain alcohol in excess of fourteen per cent (14%) by volume."

(c) "For prohibiting the sale of all liquors" and "Against prohibiting the sale of all liquors."

SEC. 41. Any person, whether as agent, employee or principal, who shall violate any provision of Article I of this Act except a provision for which a specific penalty is provided shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine of not less than One Hundred Dollars (\$100.00), nor more than One Thousand Dollars (\$1,000.00), or by imprisonment in the County Jail for not more than one (1) year or by both such fine and imprisonment. In case any provision of Article I of this Act is violated by a corporation or by the executive officer of a corporation it shall be the duty of the Attorney General to institute appropriate proceedings to forfeit the charter of such corporation and on proof of such violation by such officer of such corporation the charter of such corporation shall be forfeited by appropriate order of the court hearing such proceedings.

SEC. 42. Any room, house, building, boat, vehicle, structure, or place where intoxicating liquor is manufactured, sold, kept, or bartered in violation of the laws of this State, and all intoxicating liquor and property kept and used in maintaining the same is hereby declared to be a common nuisance, and any person who maintains such a common nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than One Thousand Dollars (\$1,000.00) or be imprisoned in the county jail for not more than one (1) year, or both. If a person has knowledge or reason to believe that his room, house, building, boat, vehicle, structure, or place is occupied or used for the manufacture or sale of liquor contrary to the provisions of the laws of this State, and suffers the same to be so occupied or used, such room, house, building, boat, vehicle, structure, or place shall be subject to a lien for and may be sold to pay all fines and costs assessed against the person guilty of such nuisance for such violation and any such lien may be enforced by action in any Court having jurisdiction.

SEC. 43. If a person shall have in his possession within this State any distilled liquors not contained in a container to which

is affixed a stamp or other valid evidence showing the payment of the tax on such liquor due to the State of Texas, he shall be guilty of a misdemeanor and upon conviction shall be fined not less than Ten Dollars (\$10.00) nor more than Five Hundred Dollars (\$500.00), or be confined in the county jail not more than six (6) months or both.

SEC. 44. When any peace officer charged with the duty of enforcing the criminal laws of this State, shall discover any person in the act of transporting in violation of the law any liquor in any wagon, buggy, automobile, water or air craft or other vehicle, it shall be his duty to seize any and all such liquor found therein transported contrary to law. Whenever liquor transported or possessed illegally shall be seized by an officer, he shall take possession of the vehicle and team or automobile, boat, air craft, water craft, or any other conveyance and shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested and all principals, accomplices and accessories to such unlawful act under the provisions of law in any Court having competent jurisdiction; but said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties in sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide judgment of the Court. The Court upon the conviction of the person so arrested shall order the liquor disposed of as provided in Section 30 of this Article, and unless good cause to the contrary is shown by the owner, shall order the sale by public auction of the property seized, and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure, and the costs of the sale, shall pay all liens, according to priorities, which are established, and by intervention or otherwise at said hearing or in other proceedings brought for said purpose, as being bona fide and as having been created without the lien or having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor and shall pay the balance of the proceeds into the Treasury of the State to the credit of the General Revenue Fund. All liens against property sold under this Section shall be transferred from the property to the proceeds of its sale. If, however, no one shall be found claiming the team, vehicle, water or air craft, or automobile. the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken, or if there be no newspaper published in such city or county, any newspaper having circulation in the county, once a week for two (2) weeks and by hand bills posted in three (3) public places near the place of seizure, and if no claimant shall appear within ten (10) days after the publication of the advertisement, the property shall be sold and the proceeds after deducting the ex-

penses and costs shall be paid into the Treasury of the State for the benefit of the General Revenue Fund.

All intoxicating liquors knowingly transported in this State upon which any lawful tax due to the State has not been paid, for the purposes of this Section shall be deemed to be transported contrary to law.

SEC. 45. (a) It shall be the duty of the State Treasurer and Board of Control to have engraved or printed the stamps necessary to comply with Section 21 of this Article and to sell same to all persons upon demand and payment therefor. The State Treasurer shall be responsible for the custody and sale of such stamps and for the proceeds of such sales under his official bond. Such stamps shall be of such design and denomination as the Board shall from time to time prescribe and shall show the amount of tax, the payment of which is evidenced thereby, and shall contain the words "Texas State Tax Paid."

(b) The sum of Five Thousand Dollars (\$5,000.00) or so much thereof as may be necessary, is hereby appropriated out of the General Fund with which to pay the costs of providing such stamps; providing that should such sum prove inadequate, it may be supplemented by funds herein appropriated to the Board. The Board is further authorized to expend all necessary funds from time to time to keep on hand an ample supply of such stamps. All contracts for stamps required by this Article shall be let by the Board of Control in the manner required by law.

(c) Any additional expense incurred by the State Comptroller or the State Treasurer for supplies or additional employees to perform the duties imposed by Articles I and II of this Act shall be compensated by the Board out of funds herein appropriated to it.

SEC. 46. Receipts from the sale of stamps, and receipts derived from the sale of permits provided for under Article I of this Act shall be deposited in the State Treasury as follows (unless otherwise specifically provided by law): One-fourth ( $1/4$ ) to the credit of the Available School Fund, and three-fourths ( $3/4$ ) to the credit of the Texas Old-Age Assistance Fund.

SEC. 47. For the purpose of enabling the Board to immediately begin the performance of its duties, there is hereby appropriated out of any money in the General Revenue Fund of the State, not otherwise appropriated, the sum of Twenty-Five Thousand Dollars (\$25,000.00), and said sum shall be immediately available. It is hereby declared to be the legislative intent that no further appropriation shall be made to the Board but that the expenses of operation shall be paid out of the funds collected from fees and taxes imposed by this Act. The Board shall pay back to the General Revenue Fund all the money herein appropriated, out of the first available revenues realized by the provision of this Act. When the moneys herein appropriated have been returned to the General Revenue Fund, the Board is hereby authorized to set up a revolving fund in the sum of

Fifty Thousand Dollars (\$50,000.00) to be taken out of revenues derived under the provisions of this Act. Said sum shall be used by said Board for the payment of salaries and other expenses necessary in performing its duties, and the same is hereby appropriated.

SEC. 48. The Board is hereby authorized to cause to be printed immediately ten thousand (10,000) copies of this Act in pamphlet form for distribution, and as many additional copies as may be required. It shall cause the same to be distributed to all District and County Attorneys in this State, to the several District Judges of the State, to the County Judges of the various counties, and to such other officers and persons in this State as it may deem necessary. The expense of printing such copies shall be paid out of the fees and taxes herein levied and assessed.

SEC. 49. Chapter 7 of Title II, Penal Code of Texas of 1925, and all amendments thereto are hereby expressly repealed. Title 80, Revised Civil Statutes, 1925, and all amendments thereto are hereby expressly repealed.

## ARTICLE II

SECTION 1. Manufacture, sale and distribution of beer authorized; local option; "beer" defined. (a) The manufacture, sale and distribution of beer containing one-half ( $\frac{1}{2}$ ) of one per cent (1%) or more of alcohol by volume and no more than four per centum (4%) of alcohol by weight is hereby authorized within the State of Texas.

Unless otherwise herein specifically provided by the terms of this Act, the manufacture, sale and distribution of beer, as hereinafter defined, shall be governed exclusively by the provisions of Article II of this Act, Chapter 116, Acts of the Regular Session, Forty-Third Legislature, and all amendments thereto, are hereby repealed.

(b) It shall continue to be unlawful to manufacture, sell, barter or exchange in any county, Justice's Precinct or incorporated city or town any malt liquor containing in excess of one-half ( $\frac{1}{2}$ ) of one per cent (1%) alcohol by volume except in counties, Justice's Precincts or incorporated cities or towns wherein the voters thereof had not adopted prohibition by local option elections held under the laws of the State of Texas and in force at the time of taking effect of Section 20, Article 16 of the Constitution of Texas in 1919; except that in counties, Justice's Precincts or incorporated cities or towns wherein a majority of the voters have voted to legalize the sale of beer in accordance with the local option provisions of Chapter 116, Acts of the Regular Session of the Forty-Third Legislature, beer may continue to be sold lawfully. It is expressly provided, however, that local option election may be held in any county, Justice's Precinct or incorporated city or town within this State in ac-



cordance with the provisions of Section 32 to 40 inclusive of Article I of this Act, for the purpose of determining from time to time whether the sale of beer shall be prohibited or legalized within the prescribed limits; and it shall be unlawful to sell beer in any county, Justice's Precinct or incorporated city or town wherein the same shall be prohibited by local option election, and lawful to sell beer under the provisions hereof in any county, Justice's Precinct, or incorporated city or town wherein the sale of beer shall be legalized by local option election.

(c) The word "beer" as hereinafter used in this Act and for the purpose of this Article, shall mean any malt beverage containing one-half (1/2) of one per cent (1%) or more of alcohol by volume and not more than four per centum (4%) of alcohol by weight.

SEC. 2. Containers. (a) Beer can be manufactured, sold and distributed in barrels, kegs, bottles and other containers.

(b) As a standard of measure, the word "barrel" shall mean a container containing thirty-one (31) standard gallons.

SEC. 3. Definitions; general distributor's license. (a) A "manufacturer" is hereby defined to be any person licensed to manufacture or brew beer and to distribute and to sell same to others in the original package or container.

(b) A "general distributor" is hereby defined to be any person licensed to distribute or to sell beer to local distributors, retail dealers and/or others in the original package or container.

(c) A "local distributor" is hereby defined to be any person licensed to sell and distribute beer to retail dealers and ultimate customers in the county of his residence in unbroken packages not to be consumed on the premises where sold.

(d) A "retail dealer" is hereby defined to be any person licensed to sell beer in bottles and from kegs, barrels or other containers to the ultimate customer.

(e) A "general distributor" shall procure the primary license in the county of his domicile or residence, and if he desires to establish any place of business in any other county, he shall present his license secured from the county of his residence to the Assessor and Collector of Taxes of such county, together with a license fee of Fifty Dollars (\$50.00), and it shall be the duty forthwith of such Assessor and Collector of Taxes to issue a license for such general distributor in such county.

(f) A distributor, local or general, may maintain necessary warehouses, for storage purposes only, from which delivery may be made without such warehouse being licensed.

(g) "Person" shall include any corporation, partnership, association and person or group of persons.

SEC. 4. License. It shall be unlawful for any person to manufacture or brew for the purpose of sale or to sell or distribute any beer without first having applied for and secured a license as required by this Article.

SEC. 5. License fees and regulations. Before any license required by this Article shall be issued, the license fee required therefor shall be paid to the Assessor and Collector of Taxes of the County where such license is issued for the use and benefit of the General Fund of the State of Texas. Annual fees required for license authorized by this Article shall be as follows:

- |   |          |
|---|----------|
| (a) For a license authorizing the manufacture and sale by a manufacturer  | \$500.00 |
| (b) For a general distributor   | 200.00   |
| (c) For a local distributor   | 50.00    |
| (d) For a license authorizing the sale of beer by retail dealer for consumption on or off the premises where sold   | 25.00    |
| (e) For a license authorizing the sale of beer by retail dealer in the original container direct to the consumer, but not for resale, and not to be consumed on the premises where sold | 10.00    |

(f) Any license issued under the terms of this Article authorizing the manufacture, distribution and sale of beer shall terminate one (1) year from the date issued, and no license shall be issued for a longer term than one (1) year. Any such license may be renewed by written application of the licensee filed with the Assessor and Collector of Taxes of the county of the licensee's residence, not more than thirty (30) days prior to the date of expiration of any license held by him. Such application shall be in writing, signed by the applicant and contain full and complete information as set out and required in the original application upon which such original license was issued, accompanied by a fee of Two Dollars (\$2.00), which said sum of Two Dollars (\$2.00) shall be in addition to the amounts in this Article required to be paid for annual licenses, as a renewal fee charge. Such sums so paid as renewal fee charges shall be deposited in the County Treasury by the respective Assessors and Collectors of Taxes as fees of office and be so accounted for by them respectively. Upon the presentation of such application for renewal of license, together with the sums required by this Article for an annual license, plus the said renewal fee of Two Dollars (\$2.00), it shall be the duty of the Assessor and Collector of Taxes to forthwith issue such renewal license upon the form to be prescribed by the Texas Liquor Control Board; provided, however, that no applicant for a license under the terms of this Article shall be required to pay at any one time more than the annual fees required for license hereunder and the renewal fee of Two Dollars (\$2.00) herein provided; but such applicant shall always be required to pay such fees in advance.

(g) No manufacturer, general distributor, local distributor or retail dealer shall carry on such business at more than one place under the same license, but a separate license must be obtained for each place of business, nor shall any such license be volun-

tarily assigned more than once, but before any assignee of such license can engage in business thereunder, he or they shall comply with the provisions of this Article governing the manufacture, sale and distribution of beer as required of original licensee, and provided further that the sale of such license, whether in the name of the original licensee or assignee, may be made under execution of mortgage, and the holder of such license under execution of foreclosure shall have the right to surrender such license to the State or county which issued the tax receipt, which is the basis thereof, and shall receive therefor the pro rata unearned portion of such license, and appropriation of such funds as may be required for such refunds is hereby authorized, provided that should such original licensee or his assignee desire to change the place designated in said license he may do so by applying to the County Judge as in the case of the original application for license as herein provided. No licensee shall obtain any refund upon the surrender or non-use of any license for the manufacture, sale or distribution of beer.

(h) The Commissioners Court of each county in this State shall have the power to levy and collect from every person that may be licensed hereunder in said county a license fee equal to one-half ( $\frac{1}{2}$ ) of the State fee; and the city or town wherein the licensee is domiciled shall have the power to levy and collect a license fee not to exceed one-half ( $\frac{1}{2}$ ) of the State fee, but no other fee or tax shall be levied by either. But nothing herein contained shall be construed as preventing the levying, assessing and collecting general ad valorem taxes on the property of the said persons, individuals, partnerships or corporations so licensed.

(i) There is hereby provided a "Temporary License" authorizing the sale by a retail dealer of beer for consumption on or off the premises where sold. The fee for such "Temporary License" shall be Five Dollars (\$5.00). Such licenses shall be issued by the Assessor and Collector of Taxes upon application approved by the County Judge, but no such permit shall be issued to any person who does not also hold a license as provided in sub-section (d) of this Section, and no such permit shall authorize the sale of beer at any point outside the county where same is issued. Any such temporary license shall expire at the end of the fourth day after the date the same is issued. Fees collected upon the issuance of such temporary licenses shall be retained by the county and no other fees shall be charged for such licenses; and no refund shall be allowed upon the surrender or non-use of any such license. The County Judge shall issue such licenses only for the sale of beer at picnics, celebrations, or similar events, and may refuse to issue such license if in his judgment the issuance of the license would in any manner be detrimental to the public.

(j) Every license issued prior to the effective date hereof to any manufacturer, general distributor, local distributor or retail dealer, shall remain in force until midnight of December 31st,

1935, unless surrendered in the manner herein provided; provided, however, that the power and authority heretofore granted to the State Comptroller for the enforcement of Chapter 116, and the duties imposed upon him are hereby transferred to and imposed upon the Texas Liquor Control Board; and provided that the schedule of license fees provided in sub-sections (d) and (e) of this Section 5 shall not be effective until January 1, 1936.

SEC. 6. Beer tax; stamps. (a) There is hereby levied and assessed a tax at the rate of One Dollar and Twenty-four Cents (\$1.24) per barrel on all beer sold, stored or distributed in this State or imported into this State. On imported beer the duty of paying said tax and affixing and cancelling the tax stamp as required under this Article shall rest primarily on the importer, and it is hereby declared to be unlawful to import beer into this State unless said tax has first been paid and the tax stamp evidencing such payment has been first affixed and cancelled as required by this Article.

It is the intention of this Section to impose upon all persons importing beer into this State the duty of paying said tax and affixing said stamp as required by this Article before said beer is imported into the State. Provided, however, if it should be determined that this sub-section imposes an undue burden on interstate commerce and for that reason is invalid, then it is hereby declared to be the legislative intent, nevertheless, to levy and collect the tax at the rate herein prescribed upon all beer sold, stored or distributed in this State, or imported into this State, and the duty of paying this tax shall rest upon the first person receiving, selling, storing or distributing said beer in this State; provided, further, however, that the tax herein prescribed shall be paid but one time.

No manufacturer, however, shall be required to affix any stamps on any container of beer to be transported out of this State while same is stored in any brewery where same is brewed.

It shall be unlawful to transport to destinations in this State any beer upon which said tax has not been paid.

(b) Said tax shall be paid and evidenced by placing stamps as hereafter provided in the denomination required on each original barrel, keg, box, carton or other container in which beer in bulk or in bottles is packed; provided, however, that such container shall not contain more than the content of one (1) barrel of beer; and provided further that at the time such stamp is affixed, the person affixing the same shall by indelible ink or stamp cancel said revenue stamp by placing the date and his or its full name or initials on said revenue stamp.

(c) Provided further that if at the time said beer is received in this State, said stamps, as required by this Article have already been affixed and/or dated and initialed, the person receiving the same shall be relieved therefrom, but he shall not be relieved from dating or initialing the same if no initial or date appears on said stamp upon receipt of said beer.

FORTY-FOURTH LEGISLATURE—SECOND CALLED SESSION. 1831

(d) Said stamp shall be placed on each barrel, keg, carton, box, or other container upon which the stamp is required to be affixed in such way that such container cannot be conveniently and practically opened without mutilating or defacing said stamp. Every person opening any such container upon which a stamp has been placed shall at the time mutilate or otherwise deface such stamp so that the same cannot be used again.

(e) No bottled beer shall be stored in this State unless the same be in a container, unless the same is exposed for sale or is being cooled for sale, except when the same is legally in the possession of the ultimate consumer, nor shall any beer be stored or sold in this State except to the ultimate consumer, unless the same is packaged or contained in a container properly stamped.

(f) If any person has paid the tax on any containers of beer and affixed stamps thereon, and thereafter said beer is shipped out of Texas for consumption, a claim for refund may be made on paying a fee of Five Dollars (\$5.00) to the Texas Liquor Control Board at the time and in the manner prescribed by such Board. So much of any funds derived hereunder as may be necessary not to exceed two per centum (2%) thereof is hereby appropriated for such purpose. The Board may promulgate rules and regulations generally for the enforcement of this Article.

(g) There shall be levied and collected by the Board on all beer placed in warehouses or stored in this State an inspection fee at the rate of Fifty Cents (50c) per barrel; provided that any manufacturer of this State who shall have during the current year paid for a manufacturer's license under this Act shall be exempt from payment of the inspection fee; provided, however, that this inspection tax shall not be levied upon beer manufactured in a state that does not levy a similar tax upon beer manufactured in Texas and sold in such state.

SEC. 7. Tax to be paid and stamps affixed at source. It is the purpose and intent of this Article to require the tax to be paid and the stamp evidencing the same to be affixed on the first sale, distribution, storage or transportation and at the source, to the end that it will preclude any person evading the payment of this tax, and so as to relieve as nearly as possible the consumer and retail dealer from having to affix said stamps.

SEC. 8. Printing or engraving stamps; appropriation. (a) It shall be the duty of the State Treasurer to have engraved or printed the stamps necessary to comply with this Article and to sell same to all persons upon demand and payment therefor, and one-fourth ( $\frac{1}{4}$ ) of the proceeds of such sale shall be placed to the credit of the State Available School Fund and three-fourths ( $\frac{3}{4}$ ) to the Texas Old-Age Assistance Fund, and the State Treasurer shall be responsible for the custody and sale of such stamps and for the proceeds of such sales under his official bond. Such stamps shall be of such design and denomination as the Board shall from time to time prescribe and shall show the amount of tax, the payment of which is evidenced thereby, and shall contain the words "Texas State Tax Paid."

(b) The sum of Five Thousand Dollars (\$5,000.00) or so much thereof as may be necessary, is hereby appropriated out of the General Fund with which to pay the costs of providing such stamps; provided, that should such sum prove inadequate it may be supplemented by funds herein appropriated to the Board. The Board is further authorized to expend all necessary funds from time to time to keep on hand an ample supply of such stamps. All contracts for stamps required by this Article shall be let by the Board of Control in the manner required by law. All appropriations of monies authorized by the Forty-Fourth Legislature, Regular Session, 1935, for enforcement of the provisions of Chapter 116, Acts Regular Session, Forty-Third Legislature, by the Comptroller of Public Accounts, are hereby transferred and made available for expenditure by the Texas Liquor Control Board in the enforcement of this Article.

SEC. 9. (1) It shall be unlawful for any manufacturer or distributor directly or indirectly or through a subsidiary or affiliate, any agent or any employee, or by any officer, director or firm member:

(a) Ownership of Interest or Real Estate. To own any interest in the business of any retail dealer in beer, or any interest of any kind in the premises in which any such retail dealer conducts his or its business.

(b) Retail Licenses. To hold (after the expiration of any existing licenses) the ownership or any interest in any license to sell brewery products for consumption on the premises covered by such license, except the license of manufacturers to dispense their own products on the brewery premises.

(c) Loans and Guaranties. To furnish, give or lend any money or other thing of value, except signs, or to extend unusual credit terms, to any person engaged in selling brewery products for consumption on the premises where sold, or to any person for the use, benefit or relief of said person engaged in selling as above or to guarantee the repayment of any loan or the fulfillment of any financial obligation of any person engaged in selling as above. The extension of credit for longer period of time than is generally extended to regular customers of a manufacturer or distributor covering the purchase of brewery products from such manufacturer or distributor shall be deemed unusual credit terms.

(d) Consignment Sale. To make or enter into any agreement or contract, the effect of which will amount to the shipment or delivery of brewery products on consignment. "Consignment," as here used, means the delivery of products under an agreement whereby the person receiving such products has the right at any time prior to sale to relinquish possession to or return them to the shipper, and whereby the title to such products remains in the shipper.

(e) Equipment and Fixtures. To furnish, give, rent, lend or sell any equipment, fixtures or supplies to any person engaged in selling brewery products for consumption on the premises where

sold. This sub-section does not apply to such equipment, fixtures or supplies furnished, given, loaned, rented or sold prior to the effective date of this Act, except that such transactions made prior to this date are not to be used as a consideration for an agreement thereafter made respecting the purchase of brewery products; provided, that equipment, fixtures or supplies furnished, given, rented, loaned or sold to any person engaged in selling brewery products for consumption on the premises where sold, prior to the effective date of this Act, when removed from the premises of such person or repossessed by any manufacturer or distributor of brewery products, or by his agents or employees, shall not again be furnished, given, rented, loaned or sold to any person engaged in the sale of brewery products for consumption on the premises where sold.

This sub-section shall not apply to the practice of furnishing carbonic acid gas or tapping accessories, such as rods, vents, hose, washers, couplings, taps, vent tongues, and check valves to persons engaged in selling brewery products for consumption on the premises where sold, when a charge is made for such carbonic acid gas in accordance with the reasonable open market value thereof in the locality where furnished, and if the aggregate cost to any one person of all tapping accessories herein enumerated furnished to him by such manufacturer or distributor in any twelve-month period does not exceed Five Dollars (\$5) for each tapping unit used in dispensing brewery products purchased from such manufacturer or distributor.

(f) Allowances and Rebates for Advertising and Distribution Service. To pay or make any allowance to any buyer for a special advertising or distribution service:

(1) Unless in pursuance of a written contract defining the service to be rendered and the payment therefor; and

(2) Unless such service is rendered and the payment is reasonable and not excessive in amount; and

(3) Unless such contract is separate and distinct from any sales contract; and

(4) Unless such payment is equally available for the same service to all competitive buyers in the same class in the same trade area.

(g) Prizes and Premiums. To offer any prize, premium, gift, or other similar inducement, except advertising novelties of nominal value, to any dealer in or consumer of brewery products.

(h) Advertising. To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical or other publication or by any sign or outdoor advertisement or any other printed or graphic matter, any advertisement of any brewery product, if such advertisement causes, or is reasonably calculated to cause deception of the consumer with respect to the product advertised. An advertisement shall be deemed misleading if it is untrue in any particular or if directly or by ambiguity, omission, or inference,

it tends to create a misleading impression. Any advertisement of alcoholic content of any brewery product or any advertisement disparaging of a competitor's products, or that is obscene or indecent, shall be unlawful.

(i) Misbranding. To sell or otherwise introduce into commerce any brewery product that is misbranded. A product is misbranded:

- (1) Food and Drug Act Requirement—If it is misbranded within the meaning of the Food and Drug Acts.
- (2) Standards of Fill—If the container is so made, formed or filled as to mislead the purchaser, or if its contents fall below the recognized standards of fill.
- (3) Standards of Quality—If it misrepresents the standard of quality of product in the branded container.
- (4) Labels—If it is so labeled that it purports to be any product other than is actually in the container.

(j) Exclusive Outlet. To require, by agreement or otherwise, that any retailer engaged in the sale of brewery products shall purchase any such products from such persons to the exclusion, in whole or in part, of the products sold or offered for sale by any other person engaged in the manufacture or distribution of brewery products, or to require the retailer to take and dispose of a certain quota of any such product.

(k) Commercial Bribery. To give or permit to be given money or anything of value in an effort to induce agents, employees, or representatives of customers or prospective customers to influence their employers or principals to purchase or contract to purchase brewery products from the maker of such gift, or to influence such employers or principals to refrain from dealing or contracting with competitors.

(l) Returnable Container. It shall be unlawful for any manufacturer to accept as a return or to purchase or use a hogshead, barrel, half-barrel, keg, case or bottle permanently branded or imported with the name of another manufacturer.

(m) Labeling. To manufacture or sell or otherwise introduce into commerce in this State any brewery product unless it bears a label showing in plain, legible type the name and address of the manufacturer, or the name of the distributor for whom any special brand is manufactured, the brand or trade name, and the net content of the bottle in terms of United States liquid measure; or to manufacture or sell or otherwise introduce into commerce in this State any beer or container or dispensing equipment, carton or case for beer bearing a label or imprint which by wording, lettering, numbering or illustration, or in any other manner carries any reference or illusion, or suggestion to the alcoholic strength of the product or to any manufacturing process, ageing, analysis or scientific matter or fact, or upon which appears any such words or combination of words, or abbreviations thereof, as "strong," "full strength," "extra strength," "high test," "high proof," "pre-war strength," "full old time alcoholic strength," or any words or figures or



other marks or characters alluding or relating to "proof," "balling" or "extract" contents of the product, or which bears a label that is untrue in any particular or which directly or by ambiguity, omission or inference tends to create a misleading impression or causes, or is reasonably calculated to cause, deception of the consumer or buyer with respect to the product.

(2) It shall be unlawful for any retail dealer to dispense any draft beer unless each faucet or other dispensing apparatus is equipped with a sign clearly indicating the name or the brand of the particular product being at the time dispensed through each faucet or other apparatus, which sign shall be in legible lettering and in full sight of the purchaser.

(3) Provided, that if any provisions of this Section 9 is for any reason held unconstitutional and invalid, such decision shall not affect the validity of the remaining portions, and the Legislature hereby declares that it would have passed this Section, and each sub-section, provision, sentence, clause or phrase thereof, irrespective of the fact that any provision is declared unconstitutional.

SEC. 10. Procedure to obtain license. (a) Any person desiring a license as manufacturer, distributor or retail dealer may in vacation or in term time file a petition with the County Judge of the county in which the applicant desires to engage in such business, which petition shall state as follows:

If a manufacturer,

(1) That he is a law abiding, taxpaying citizen of this State, over twenty-one (21) years of age; that he has not been convicted of a felony within two (2) years immediately preceding the filing of said petition, and has been a resident of the county wherein such license is sought for more than two (2) years next preceding the filing of said petition.

(2) If a co-partnership, that all of the individuals have the same qualifications as provided in paragraph (1) above.

(3) If a corporation, that applicant is organized and chartered under and has complied with all corporation laws of this State applicable to such corporation; the principal place of business in such county where such license is sought, and the president or manager shall make an affidavit that he is a law-abiding, taxpaying citizen of this State, over twenty-one (21) years of age, and that he has not been convicted of a felony within two (2) years immediately preceding the filing of said petition.

If a distributor,

(1) Such applicant shall give the same information required of a manufacturer, including the place or places where such business is to be transacted.

If a retail dealer,

(1) The same information required of a manufacturer.

(2) Whether he desires to sell beer for consumption on or off the premises.

If an individual,

(1) That the applicant shall make an affidavit duly signed and sworn to before any person authorized to administer oaths under the laws of this State, showing that he has not since the effective date of this Act, naming the date in the affidavit, and within two (2) years next preceding the making of said application and while engaged in the manufacture, sale or distribution of beer, paid, contributed or furnished any money or thing of value to any candidate for any public office in this State.

If the application is in behalf of a corporation, the affidavit shall be by the president, vice-president, secretary or treasurer of such corporation and shall contain a statement that the corporation has not paid, contributed or furnished any money or thing of value to any candidate for any public office in this state since the effective date of this Act, naming the date in the affidavit, and within two (2) years next preceding the making of said application and while engaged in the business of manufacturing, sale or distribution of beer. Any person who makes a false affidavit in reference to the matters and things required by this Section, shall be guilty of a felony, and upon conviction shall be punished as now provided by law for having committed the offense of false swearing.

(b) Such manufacturer, distributor, or retail dealer desiring to be licensed shall file said petition with the County Judge who shall set same for a hearing at a date not less than five (5) nor more than ten (10) days from the filing of same, and if upon hearing, he finds the facts stated in such petition are true, he shall authorize a license to be granted as prayed for, provided, however, that upon the filing of such petition, the clerk shall first give notice thereof by posting at the courthouse door a written notice of the filing of said petition and a copy of the substance thereof, and such notice shall state when the petition shall be heard. Said petition may be inspected by any person. Any citizen shall be permitted to contest the facts stated in said petition and the applicant's right to secure license upon giving security for all costs which may be incurred in such suit, should the same be decided in favor of the applicant; provided, however, no county or district attorney shall be required to give bond for such costs, but the county or State as the case may be shall be liable therefor.

(c) Upon the court's authorizing a license to be issued the Judge shall so certify and deliver a copy of such certification to the applicant, who shall thereupon present the same to the assessor and collector of taxes and pay the fee required, whereupon it shall be the duty of the assessor and collector of taxes to issue such a license on a form prescribed by the Texas Liquor Control Board showing the amount paid, date, classification and such other information that may be required by the Board, including the correct address of the place of business. A copy of such license shall be sent by the assessor and collector of taxes

FORTY-FOURTH LEGISLATURE—SECOND CALLED SESSION. 1837

forthwith to the office of the Texas Liquor Control Board and a record thereof kept in said office.

(d) In the event the County Judge denies the application for a license, he shall enter his judgment accordingly and the applicant may within thirty (30) days thereafter appeal to the District Court of the County where said application is made, and such District Court may hear and determine such appeal in term time or vacation by trial de novo. If the applicant shall prevail by final judgment, a certified copy thereof shall be presented to the Assessor and Collector of Taxes, who shall thereupon accept the fees required and license shall be issued as provided herein.

(e) Any manufacturer, distributor or person shipping or consigning beer into this State shall file with the Secretary of State a certificate certifying the name of his agent upon whom service may be had, his or its street address and business, and if such shall not have been done within fifteen (15) days from the effective date hereof then service may be had on the Secretary of State in any cause of action arising out of the violation of this Article governing the manufacture, distribution and sale of beer, and it shall be the duty of the Secretary of State to send any such citation served on him to such person who may be in foreign state, registered, return receipt requested and such receipt will be prima facie evidence of service on such person.

SEC. 11. Form of license; statements by Assessor and Collector of Taxes. (a) Upon the payment of the fee to the Assessor and Collector of Taxes and the proper evidence from the County Judge that such applicant should be licensed, such Assessor and Collector shall issue to the applicant the proper license which shall be by him signed, be under the seal of his office, be dated, state on its face for what it is issued, date when it will expire, by whom and where such business is to be conducted and shall describe the place where same is to be kept and whether licensee is authorized to act as manufacturer, general distributor, local distributor, or retail dealer of beer as set out in the application.

(b) The assessor and collector of taxes shall make statements to the Texas Liquor Control Board of the amounts collected by him at the times and in the manner as required by the Board.

SEC. 12. Penalty. If any person manufactures or sells beer in this State as a manufacturer, distributor or retail dealer without then and there being licensed as a manufacturer, distributor or retail dealer respectively, or,

(b) If any person or agent or representative of any manufacturer, distributor or retail dealer shall manufacture or sell beer for any manufacturer, distributor or retail dealer without such manufacturer, distributor or retail dealer being duly licensed as required by law, or,

(c) If any person shall sell, transport, store or otherwise handle in intrastate commerce, or conspire to sell, transport,

store or otherwise handle in intrastate commerce any beer without the stamp required in Section 6 of this Article being placed on the container as required in such Section, or,

(d) If any person shall open any such container having a stamp without then and there mutilating or otherwise defacing such stamp so that it cannot be again used, or,

(e) If any person shall attach to any container of beer any stamp that has been theretofore attached to a different container of beer, or,

(f) Shall refuse to allow on demand the Texas Liquor Control Board or any representative of said Board to make a full inspection of any place where beer is being stored, transported, manufactured or otherwise handled, or,

(g) If any person shall knowingly or wilfully sell any beer to any person under the age of twenty-one (21) years, or

(h) If any person fails to display any license required by the provisions of this Article in some conspicuous place in the house where such business is conducted, or,

(i) If any person shall sell or offer for sale in this State, whether as principal or agent, any beer unless the same be in or from the original container bearing the original label with the full name of the brewer or manufacturer of such beer, or the name and address of any distributor for whom a special brand is manufactured, both upon the label or bottle and/or upon the cap or cork of such bottle or upon the keg, or,

(j) If any person shall employ any person under the age of eighteen (18) years to sell, handle or dispense, or to assist in the selling, handling or dispensing of beer in any establishment where beer is sold by retail to be consumed on the premises where sold, or

(k) If any person shall violate any provision of this Article whether specifically enumerated above or not,

(l) He shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine in the sum not less than Twenty-five Dollars (\$25.00) and not more than Five Hundred Dollars (\$500.00), or by imprisonment in the County Jail not more than one (1) year or by both such fine and imprisonment, except when some other penalty is specifically provided by this Article in which event the penalty specifically provided shall apply to the specific act or omission.

SEC. 13. Records; penalty; other regulations. (a) Each manufacturer and distributor shall be required to keep records of the amount of beer manufactured and/or bought or received by them and the amount sold, the amount of stamps purchased by him and the amount of stamps used by him and such other records as may be required to be kept by the Texas Liquor Control Board which records at all times shall be open to the inspection of the Board or its duly authorized representatives at reasonable office hours.

(b) If any person shall commit any offense prescribed by Section 13 or violate any other provision of this Article, he shall

FORTY-FOURTH LEGISLATURE—SECOND CALLED SESSION. 1839

also forfeit to the State a penalty not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) to be recovered by the State in a suit filed in Travis County or in any county in which such violation may have occurred, which money shall be paid into the State Available School Fund, and each day of such violation shall constitute a separate and distinct violation.

(c) Each sale to any person under twenty-one (21) years of age under the provisions of this Article shall constitute a separate offense.

(d) It shall be unlawful for any person in all counties or subdivisions thereof wherein the sale of beer as defined by this Article is authorized to be sold, to sell beer on the day of any general primary election or general election held in this State, between the hours of seven o'clock A. M. and eight o'clock P. M. of the day, and

(e) It shall be unlawful for any person engaged in or having any interest in any business which manufactures, sells or distributes beer, as defined in this Article, to contribute any money or any other thing of value toward the campaign expenses of any candidate for any office in this State.

(f) No person who may engage in the sale of beer, as a principal business and which is to be consumed on the premises, under the provisions of this Article, shall offer for sale or sell such beer between the hours of twelve o'clock midnight and seven o'clock A. M. on each day as herein provided, and from and after twelve o'clock midnight Saturday until seven o'clock A. M. Monday of the following week.

(g) The Commissioners Court of any county in the territory thereof outside of incorporated cities and towns and the governing authorities of any city or town within the corporate limits of any such city or town may prohibit the sale of beer by any dealer whose principal business is the sale of beer where the place of business of any such dealer is within three hundred (300) feet of any church, school or other educational institutions, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

(h) The County Judge of any county after ten (10) days notice and hearing may revoke the license in such county:

1. When disorderly or immoral practices are permitted on the premises, or spirituous, vinous or malt liquors are illegally sold on the premises.

2. Where the word "saloon" is printed, painted or placed upon the door, window or in any other public place on or about the premises, or when the word "saloon" is used in any advertisement by the licensee.

SEC. 14. Counterfeiting stamps. Any person, other than the State Treasurer or his duly authorized agent who shall print or engrave or directly aid in or cause the printing or engraving of any stamp or stamps evidencing or purporting to evidence the

payment of any tax levied by this Act governing the manufacture, distribution and sale of beer, or who shall use or consent to the use of any counterfeit or unauthorized stamps in connection with the sale or offering for sale of any beer, or shall place or cause to be placed on any container containing or to contain such beer any such unauthorized or counterfeit stamps, or if any person shall knowingly possess any counterfeit stamps or shall counterfeit any license to be used in lieu of the stamps or license required by this Article governing the manufacture, distribution and sale of beer, he shall be guilty of a felony and upon conviction be punished by imprisonment in the penitentiary for not less than two (2) years nor more than five (5) years.

SEC. 15. Penalty for unlawfully permitting opening or consuming beer on premises where sold. Any person, whether as principal or agent of any firm, corporation or association of persons engaged in the business of manufacturing and selling or in the business of distributing and selling or in the retail business of selling beer under license which does not permit such beer to be opened and consumed on the premises where sold, who shall permit any such beer so manufactured and sold or distributed and sold to be opened and consumed on the premises where sold, shall be guilty of a misdemeanor and upon conviction, be punished by a fine of not less than Fifty Dollars (\$50.00), nor more than Five Hundred Dollars (\$500.00).

SEC. 16. Forfeiture of license. In addition to the penalties herein provided, the license of any person convicted of violating any of the provisions of this Article governing the manufacture, sale and distribution of beer shall be subject to forfeiture in a suit filed by the State for such purpose by reason of such conviction; and no license shall be reissued to any person whose license for any of such occupations has been revoked or forfeited within one (1) year next preceding the filing of his application for a new license.

SEC. 17. Effect of forfeiture of license. In case the license of any licensee hereunder is forfeited under the provisions of this Article, nevertheless such licensee shall be authorized to sell or dispose of in bulk any stock of beer he may have on hand at the time such license is forfeited.

SEC. 18. Transportation of beer. It is hereby declared to be lawful to transport beer, as herein defined, from any place in this State, where the sale, manufacture and distribution of said beer is authorized by law, to any other place within this State where the same may be lawfully manufactured, sold or distributed; and from the State boundary to any such place, even though in the course of such transportation the route over which the same is being transported may traverse local option territory in which the manufacture, sale and distribution of said beer is prohibited. Provided, however, that any such shipments must be accompanied by a written statement furnished and signed by the shipper showing the name and address of the consignor and the consignee, the origin and destination of such

FORTY-FOURTH LEGISLATURE—SECOND CALLED SESSION. 1841

shipment and it shall be the duty of the person in charge of such cargo while it is being so transported to exhibit such written statement to any peace officer making demand therefor, and said statement shall be accepted by such officer as prima facie evidence of the lawful right to transport such beer.

SEC. 19. Refunding fee for unexpired term. In all cases where any person pursuing the occupation of selling beer containing not more than four per centum (4%) of alcohol by weight under licenses issued in accordance with the laws of this State has been or shall hereafter be prevented from pursuing such occupation for the full time to which he would be otherwise entitled by reason of the adoption of local option in any county or subdivision thereof, the proportionate amount of license fees paid by him for the unexpired term shall be refunded to him.

SEC. 20. Obstructing view of interior of places of business. No "blind" or barriers of any kind or character shall be installed or maintained in the openings or doors of any establishment whose principal business is the sale of beer; neither shall any windows on said establishments be painted in such a way as to obstruct the views from the general public.

SEC. 21. Upon having called to his attention by affidavit of any credible person that any person is violating, or is about to violate, any of the provisions of this Article governing the manufacture, distribution and sale of beer, it shall be the duty of the Attorney General or the District or County Attorney to assist in any proceedings to restrain any such person from the threatened or any further violation, and the District Judge shall have authority to issue restraining orders without hearing, and upon notice and hearing to grant injunction, to prevent such threatened or further violation by the person complained against, and may require the person complaining to file a bond in such amount and containing such conditions and in such cases as the Judge may deem necessary. Upon any judgment of the Court that violation of any restraining order or injunction issued hereunder has occurred, such judgment shall operate to cancel, without further proceedings, any license held by the person who is defendant in the proceedings, and no license shall be re-issued to any person whose license has been so cancelled, revoked or forfeited, within one (1) year next preceding the filing of his application for a new license. It shall be the duty of the District Clerk to notify the Assessor and Collector of Taxes and the Texas Liquor Control Board of any judgment of a Court which may operate hereunder to cancel a license.

SEC. 21a. It shall be unlawful for any person paid a salary or per diem or receiving any compensation out of the appropriation made or taxes collected under the terms of this Act to engage in or take part in any political campaign. By engaging in a political campaign or taking part in a political campaign is meant and shall include distributing circulars, handbills, posting pictures, handing out cards, making speeches or soliciting support for or opposing the election of any candidate for any public

office. Any such employee engaging in such inhibited and unlawful conduct shall be subject to removal from his position and restraint from re-employment in such department for a period of one (1) year by a judgment in the district court of the county wherein such unlawful activity occurred, either in whole or in part. Any ten (10) or more qualified resident voters of such county shall have authority to institute a suit in a district court of such county praying for the removal of such employee from such department, citing such employee and any member of the Board and, upon final hearing, the allegations of the petition being sustained, the judgment shall be to discharge the employee and to restrain the department from re-employing such employee for a period of one (1) year from the date of the judgment.

In like manner, any member of the Board who shall violate this section or who shall solicit, ask or suggest to any employee, either directly or through any other person, that such employee violate such section, then and in that event such Board member may be removed by quo warranto proceedings in the district court upon the relation of any ten (10) qualified voters of the county in which such violation occurred. The writing of a letter into any county wherein such letter violates or suggests, asks or solicits a violation of this law shall constitute sufficient grounds for removal in any county through which such letter passed or into which such letter passed.

SEC. 22. If any part, section, subsection, paragraph, sentence, clause, phrase or word contained in either Articles I or II of this Act shall be held by the Courts to be unconstitutional, such holding shall not affect the validity of the remaining portions of the Act and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity.

SEC. 23. The fact that the people of Texas have adopted a Constitutional Amendment legalizing the sale of liquor in wet areas as herein defined and the further fact that the traffic in liquor in this State is unregulated at this time, create an emergency and an imperative public necessity that the Constitutional Rule requiring all bills to be read on three several days in each House be suspended, and such Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

[NOTE.—H. B. No. 77 passed the House, November 6, 1935, by a vote of 89 yeas, 44 nays; House refused to concur in Senate amendments and Conference Committee was appointed. November 8, 1935; House adopted Conference Report, November 14, 1935, by a vote of 105 yeas, 40 nays; passed the Senate, with amendments, November 8, 1935, by a vote of 21 yeas, 6 nays; Senate adopted Conference Report, November 14, 1935, by a vote of 22 yeas, 6 nays.]

Approved November 15, 1935.  
Effective November 15, 1935.